TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 157

ARLINGTON HOTEL COMPANY, PLAINTIFF IN ERROR,

vs.

ELIZABETH H. FANT, MARY L. FORTUNE, AND R. T. FANT

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

FILED MAY 31, 1923

(33,466)



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IN CIRCUIT COURT OF GARLAND COUNTY

R. T. FANT, Plaintiff,

vs.

ARLINGTON HOTEL COMPANY, Defendant

COMPLAINT—Filed Sept. 10, 1924

The plaintiff, R. T. Fant, for his complaint against the defendant, Arlington Hotel Company, says, that the defendant, Arlington Hotel Company is and was at the time hereinafter mentioned, a corporation, duly incorporated under the laws of the State of Arkansas; that on and before April 5th, 1923, the defendant was operating a hotel or public inn known as the Arlington Hotel, in the city of Hot Springs, Arkansas, which hotel was situated upon a portion of the following described territory: A part of the Hot Springs Mountain, the limits of which are particularly described by the following boundary lines, commencing at stone monument number seven (7) set upon the west line of Reserve Avenue and marking the boundary line of Hot Springs Mountain and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monument numbered forty-two (42) and marking the boundary line of Hot Springs Mountain, thence along the south line of Fountain Street to its intersection with Central Avenue or to stone monument number thirty-three (33); thence south along the east line of Central Avenue to where the same is intersected by Reserve Avenue at stone monument numbered thirty (30), thence along the north boundary line of Reserve Avenue to stone monument number seven (7*0*) the point of commencement, all in township two south, range nineteen west, in the county of Garland, State of Arkansas;

[fol. 4] That the State of Arkansas, by an act of the legislature which was approved February 21, 1903, ceded to the United States of America, exclusive jurisdiction over all of the territory above described, reserving to the state only the right to tax property in private ownership within

said territory and to serve process within said territory in civil and criminal proceedings; and the United States, by an act of Congress passed April 20, 1904, accepted the jurisdiction which had been thus ceded to it by the State of Arkansas and all of said territory has been within the exclusive jurisdiction of the United States ever since the acceptance of said jurisdiction by said act of Congress;

That the plaintiff, on the 5th day of April, 1923, was a transient guest in the defendant's Arlington Hotel and had with him his baggage consisting of a trunk, a suit case, wearing apparel and other personal effects of the value of Twelve Hundred ($1,200.00) dollars; that on the 5th day of April, 1923, while the plaintiff was a guest at said hotel, said hotel was completely destroyed by fire and all of the plaintiff's property was completely destroyed, and the plaintiff was damaged thereby in the sum of Twelve Hundred ($1,200.00) dollars.

That Congress since the acceptance of the jurisdiction of said territory has enacted no law affecting the liability of hotel or inn keepers and the defendant is liable to the plaintiff for the loss of his said property.

The plaintiff further states that the defendant's said hotel caught fire on the morning of April 5th and defendant's servants and agents learned as early as eleven o'clock A. M. that the hotel was on fire but they negligently failed to call the fire department or to notify the guests until [fol. 5] after three o'clock P. M. and the defendants manager and other agents in charge of its hotel, negligently assured the plaintiff and the other guests of said hotel that there was no danger and that there was no use for any of the guests to attempt to remove their property from their rooms, when the defendant knew, or by the exercise of ordinary care, should have known, that its hotel would be destroyed and there was no chance to save it, and the plaintiff, relying upon the defendant's assurance permitted his property to remain in his room in said hotel for several hours and until it was impossible to remove it and it was destroyed; and the defendant also placed guards in its hotel and said guards refused to permit the plaintiff and other guests of said hotel to go to their rooms to remove

their property, and if it had not been for the negligent acts of the defendant and its agents in failing to notify plaintiff of the danger and falsely assuring the plaintiff that there was no danger, and in placing guards in its hotel to prevent plaintiff from removing his property, plaintiff could easily have saved his property and plaintiff's loss was due to said negligent and wrongful acts of the defendant.

Wherefore, plaintiff prays judgment against the defendant, Arlington Hotel Company in the sum of Twelve Hundred ($1,200.00) dollars, with interest for his costs and for other relief.

Murphy & Wood, Attorenys for Plaintiff.

[File endorsement omitted.]

[fol. 6] In Circuit Court of Garland County

Elizabeth H. Fant, Plaintiff,

vs.

Arlington Hotel Company, Defendant

Complaint—Filed Sept. 10, 1924.

The plaintiff, Elizabeth H. Fant, for her complaint against the defendant, Arlington Hotel Company, says, that the defendant, Arlington Hotel Company is and was at the time hereinafter mentioned, a corporation, duly incorporated under the laws of the State of Arkansas; that on and before April 5th, 1923, the defendant was operating a hotel or public inn known as the Arlington Hotel, in the city of Hot Springs, Arkansas, which hotel was situated upon a portion of the following described territory: A part of the Hot Springs Mountain, the limits of which are particularly described by the following lines:

Commencing at stone monument number seven (7) set upon the west line of Reserve Avenue and marking the boundary line of Hot Springs Mountain and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monument numbered forty-

two (42) and marking the boundary line of Hot Springs Mountain, thence along the south line of Fountain Street to its intersection with Central Avenue or to stone monument number thirty-three (33); thence south along the east line of Central Avenue to where the same is intersected by Reserve Avenue at stone monument numbered thirty (30), thence along the north boundary line of Reserve Avenue to [fol. 7] stone monument number seven (7), the point of commencement, all in township two south, range nineteen west, in the county of Garland, State of Arkansas;

That the State of Arkansas, by an act of the legislature which was approved February 21, 1903, ceded to the United States of America, exclusive jurisdiction over all of the territory above described, reserving to the state only the right to tax property in private ownership within said territory and to serve process within said territory in civil and criminal proceedings; and the United States, by an act of Congress passed April 20, 1904, accepted the jurisdiction which had been thus ceded to it by the State of Arkansas and all of said territory has been within the exclusive jurisdiction of the United States ever since the acceptance of said jurisdiction by said act of Congress;

That the plaintiff, on the 5th day of April, 1923, was a transient guest in the defendant's, Arlington Hotel and had with her her baggage consisting of a trunk, a suit case, wearing apparel and other personal effects of the value of Two Thousand ($2,000.00) dollars; that on the 5th day of April, 1923, while the plaintiff was a guest at said hotel, said hotel was completely destroyed by fire and all of the plaintiffs property was completely destroyed, and the plaintiff was damaged thereby in the sum of Two Thousand ($2,000.00) dollars.

That Congress since the acceptance of the jurisdiction of said territory has enacted no law affecting the liability of hotel or inn keepers and the defendant is liable to the plaintiff for the loss of her property.

The plaintiff further states that the defendant's said [fol. 8] hotel caught fire on the morning of April 5th and defendant's servants and agents learned as early as eleven o'clock A. M. that the hotel was on fire but they negligently failed to call the fire department or to notify the guests until after three o'clock P. M. and the defendants manager and

other agents in charge of its hotel, negligently assured the plaintiff and the other guests of said hotel that there was no use for any of the guests to attempt to remove their property from their rooms, when the defendant knew, or by the exercise of ordinary care, should have known, that its hotel would be destroyed and there was no chance to save it, and the plaintiff, relying upon the defendant's assurance, permitted her property to remain in her room in said hotel for several hours and until it was impossible to remove it and it was destroyed; and the defendant also placed guards in its hotel and said guards refused to permit the plaintiff and other guests of said hotel to go to their rooms to remove their property, and if it had not been for the negligent acts of the defendant and its agents in failing to notify plaintiff of the danger and falsely assuring the plaintiff that there was no danger, and in placing guards in its hotel to prevent plaintiff from removing her property, plaintiff could easily have saved her property and plaintiffs loss was due to said negligent and wrongful acts of the defendant.

Wherefore, plaintiff prays judgment against the defendant, Arlington Hotel Company, in the sum of Two Thousand ($2,000.00) dollars, with interest for her costs and for other relief.

Murphy & Wood, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 9] In Circuit Court of Garland County

Mary L. Fortune, Plaintiff,

vs.

Arlington Hotel Company, Defendant

Complaint—Filed Sept. 10, 1924

The plaintiff, Mary L. Fortune, for her complaint against the defendant, Arlington Hotel Company, says that the defendant, Arlington Hotel Company is and was at the time hereinafter mentioned, a corporation, duly incorporated under the laws of the State of Arkansas; that on and before

April 5th, 1923, the defendant was operating a hotel or public inn known as the Arlington Hotel, in the city of Hot Springs, Arkansas, which hotel was situated upon a portion of the following described territory: A part of the Hot Springs Mountain, the limits of which are prrticularly described by the following lines: Commencing at stone monument number seven (7) set upon the west line of Reserve Avenue and marking the boundary line of Hot Springs Mountain and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monumuent numbered forty-two (42) and marking the boundary line of Hot Springs mountain, thence along the south line of Fountain Street to its intersection with Central Avenue or to stone monument number thirty-three (33); thence south along the east line of Central Avenue to where the same is intersected by Reserve Avenue at stone monument numbered thirty (30), thence along the north boundary line of Reserve Avenue to stone monument number seven (7), the point of commencement, all in township two south, range nineteen west, in the county of Garland, State of Arkansas;

That the State of Arkansas, by an act of the Legislature which was approved February 21, 1903, ceded to the United States of America, exclusive jurisdiction over all of the [fol. 10] territory above described, reserving to the state only the right to tax property in private ownership within said territory and to serve process within said territory in civil and criminal proceedings; and the United States, by an act of Congress passed April 20, 1904, accepted the jurisdiction which had been thus ceded to it by the state of Arkansas and all of said territory has been within the exclusive jurisdiction of the United States ever since the acceptance of said jurisdiction by said act of Congress;

That the plaintiff, on the 5th day of April, 1923, was a transient guest in the defendant's, Arlington Hotel and had with her her baggage consisting of a trunk, a suit case, wearing apparel and other personal effects of the value of Fifteen Hundred ($1,500.00) dollars; that on the 5th day of April 1923, while the plaintiff was a guest at said hotel, said hotel was completely destroyed by fire and all of the

plaintiff's property was completely destroyed, and the plaintiff was damaged thereby in the sum of Fifteen hundred ($1,500.00) dollars.

The Congress since the acceptance of the jurisdiction of said territory has enacted no law affecting the liability of hotel or inn keepers and the defendant is liable to the plaintiff for the loss of her property.

The plaintiff further states that the defendant's said hotel caught fire on the morning of April 5th and defendant's servants and agents learned as early as eleven o'clock A. M. that the hotel was on fire but they negligently failed to call the fire department or to notify the guests until after three o'clock P. M. and the defendant's manager and other agents in charge of its hotel, negligently assured the plaintiss and the other guests of said hotel that there was no use [fol. 11] for any of the guests to attempt to remove their property from their rooms, when the defendant knew, or by the exercise of ordinary care, should have known, that its hotel would be destroyed and there was no chance to save it, and the plaintiff, relying upon the defendant's assurance, permitted her property to remain in her room in said hotel for several hours and until it was impossible to remove it and it was destroyed; and the defendant also placed guards in its hotel and said guards refused to permit the plaintiff and other guests of said hotel to go to their rooms to remove their property, and if it had not been for the negligent acts of the defendant and its agents in failing to notify plaintiff of the danger and falsely assuring the plaintiff that there was no danger, and in placing guards in its hotel to prevent plaintiff from removing her property, plaintiff could easily have saved her property and plaintiff's loss was due to said negligent and wrongful acts of the defendant.

Wherefore, plaintiff prays judgment against the defendant, Arlington Hotel Company, in the sum of Fifteen Hun- ($1,500.00) dollars, with interest for her costs and for other relief.

Murphy & Wood, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 12] IN CIRCUIT COURT OF GARLAND COUNTY

[Title omitted]

ORDER OVERRULING DEMURRER—March 23, 1926

On this day comes the plaintiff by *his* attorneys Murphy & Wood Esqrs., and comes the defendant by its attorneys Martin, Wootton & Martin, Esqrs. and the defendant's demurrer to the complaint heretofore filed herein is by the Court overruled.

[fol. 13] IN CIRCUIT COURT OF GARLAND COUNTY

[Title omitted]

ORDER OVERRULING DEMURRER—March 23, 1926

On this day comes the plaintiff by her attorneys Murphy & Wood, Esqrs., and comes the defendant by its attorneys Martin, Wootton & Martin, Esqrs., and the defendant's demurrer to the complaint heretofore filed herein is by the court overruled.

[fol. 14 & 15] IN CIRCUIT COURT OF GARLAND COUNTY

No. 3914

ORDER OVERRULING DEMURRER—March 23, 1926

On this day comes the plaintiff by her attorneys Murphy & Wood, Esqrs., and comes the defendant by its attorneys Martin, Wootton & Martin, Esqrs., and the defendant's demurrer to the complaint heretofore filed herein is by the Court overruled.

[fol. 16] IN CIRCUIT COURT OF GARLAND COUNTY

[Title omitted]

ANSWER—Filed Oct. 14, 1926

The Defendant, for its answer to the complaint of the plaintiff, says:

First. It denies that any property of the plaintiff was burned and destroyed in the fire which destroyed the Ar-

lington Hotel on April 5th, 1923, and denies that plaintiff was damaged as result of said fire in the sum of $1,200, or any other sum.

Second. Defendant denies that said Hotel caught fire as early as 11 o'clock A. M. on April 5th, 1923, or that they neglected and failed to call the fire department or failed to call the guests until as late as 3 o'clock P. M., and denies that its manager or other agents in charge of said hotel assured the plaintiff, or any other guests of said Hotel that there was no danger and that there was no use for any of said guests to attempt to remove their property from their rooms; and denies that the plaintiff, relying upon any assurances upon the part of this defendant, its agents, or employees, permitted his property to remain in his room until it was impossible to remove it and it was destroyed. It denies that it placed guards in the hotel who refused to let plaintiff, or other guests, go to their rooms and remove property, and denies that it was guilty of any negligence whatsoever in failing to notify the plaintiff of the danger or falsely assuring him there was no danger, or in placing guards in Hotel to prevent plaintiff, or other guests, from [fol. 17] removing their property from said hotel.

Third. It admits that said hotel was destroyed by fire on the 5th day of April, 1923, but avers that said fire happened without any fault or neglect on the part of the defendant or its servants, but was the result of an accident for which it is not re-ponsible.

Fourth. Defendant alleges that if the plaintiff lost any property in said fire, the loss thereof was caused by and resulted from plaintiff's own negligence in not removing his effects from said hotel building after the same was known by him to be burning, and was also caused by and resulted from his further neglect, in so far as his jewelry, money and valuables for which recovery is sought herein are concerned, in not depositing same in a safe or vault which defendant had provided for such purpose, and of which the defendant had due notice.

Fifth. Further answering, defendant alleges that the legislature of Arkansas by act approved March 20, 1913, limited the liability of a hotel or innkeeper, and provided by said act that the owner of hotel or inn shall not be liable to its guests for loss of property caused by fire, except in cases where the fire was intentionally produced by the hotel keeper, or its servants. And defendant alleges that the fire in which the plaintiff claims to have lost his property was not caused or intentionally produced by it, or any of its servants, and it therefore pleads said act in bar of any liability to the plaintiff in this action.

Sixth. It is further provided in said act that an innkeeper shall not be liable for the loss of article- of value, provided such hotel keeper should have a metal safe fit [fol. 18] for the custody of such articles, and who shall keep the doors of sleeping rooms of guests safely fixed with locks and bolts, and suitable fastenings on the transoms in said rooms, and keep a printed copy of said act constantly and conspicuously posted in not less than ten public places in said hotel, nor unless such guests should offer to deliver to the proprietor of the hotel such property for custody; and this defendant fully complied with all requirements in said act set forth to be kept and done by hotel keepers, but plaintiff did not at any time offer to deliver such property of his to defendant, nor did defendant refuse to accept same, and it therefore pleads said act in bar of the rights of plaintiff to recover herein.

Seventh. It is further provided in said act that hotel keepers shall not be liable to its guests in a sum in excess of $300 in any event, and defendant pleads said act in bar of said action in any sum said plaintiff may claim in excess of $300.

Eighth. It was further provided by said act that the liability of an innkeeper should be that of a depository for hire, and said act limited the liability of an innkeeper to a maximum sum of $150 for each trunk and contents placed under its care, and it therefore pleads plaintiff is not entitled to recover exceeding $150, if liable at all, and pleads said act in bar of his recovery in any sum in excess of $150.00.

Ninth. Further answering, the defendant admits that its hotel was situated upon the territory described in the complaint and that said hotel was destroyed by fire April 5th, 1923. It admits that the State of Arkansas attempted by act of Legislature approved February 21st, 1903, to cede [fol. 19] to the United States of America, exclusive jurisdiction over the territory described in said act and also described in the complaint herein, and that defendant hotel was situated on a part of the premises; and it admits that Congress by act approved April 20th, 1904, attempted to accept the jurisdiction thereover, but it says that the act of Arkansas Legislature attempting to accept same were, and are, both null and void as being in conflict with the Constitution of Arkansas and the Constitution of the United States.

Defendant says that said territory over which jurisdiction was attempted to be ceded and accepted as aforesaid, is, and was at all times, owned by the United States, but that same is not used for any governmental purposes and is held by the United States solely in its proprietary capacity; that the only part of the Reservation used for any governmental purpose, is a tract remote and disconnected from the site of the Arlington Hotel; that the site occupied by the Arlington Hotel was situated in the northwest corner of said Reservation, and the only governmental agencies or purposes for which any of said Reservation is applied is for its Army and Navy Hospital which is situated in the southwest corner of said Reservation and separated from the defendant's hotel site by a large space of ground that is not, and never has been used by the United States for any governmental purpose whatsoever, but, on the contrary, the site occupied by the defendant's hotel has been leased and let to it by the United States for hire for many years; and the entire west front of said Reservation lying between said Hotel and the Army and Navy Hospital is dedicated to Bath Houses, operated by private ownership under lease from the United States, just as was the [fol. 20] defendant's hotel until its destruction by fire as aforesaid.

Further answering, the defendant alleges that on the 21st day of March, 1914, the Secretary of the Interior of the

United States, acting under authority of an Act of Congress approved October 24th, 1912, demised and let the premises aforesaid constituting the site of the Arlington Hotel aforesaid to the defendant herein for a term of seventeen years; eleven months and fourteen days from and including the 21st day of March, 1914, for an annual rental of $10,000.00 which was agreed to be paid, and was paid by the defendant to the United States regularly as provided in said lease until the destruction of said hotel at the time hereinbefore stated.

That if said Reservation was originally intended and designed to be used by the United States for governmental purposes, then, upon execution of said lease, the United States wholly abandoned it for said purpose, and whatever jurisdiction was conferred upon the United States by the Act of Legislature of Arkansas aforesaid and accepted by Act of Congress aforesaid, ceased and determined when the government ceased to use same for governmental purpose, and leasing and letting same for private use and gain.

That to deny the force and effect of said Act of Legislature of Arkansas, approved March 20, 1913, as being in force and effect upon said premises of this defendant, would be to deprive the defendant herein of its property without due process of law, and to deny it the equal protection of law, in violation of the fourteenth amendment to the Constitution of the United States.

Wherefore, having fully answered, the defendant prays that it be discharged herein with its costs.

Arlington Hotel Company, by Martin, Wootton & Martin, Attorneys.

[File endorsement omitted.]

[fol. 21] In Circuit Court of Garland County

[Title omitted]

Answer—Filed Oct. 14, 1926

The defendant, for its answer to the complaint of the plaintiff, says:

First. It denies that any property of the plaintiff was burned and destroyed in the fire which destroyed the Ar-

lington Hotel on April 5th, 1923, and denies that plaintiff was damaged as result of said fire in the sum of $2,000, or any other sum.

Second. Defendant denies that said Hotel caught fire as early as 11 o'clock A. M. on April 5th, 1923, or that they neglected and failed to call the fire department or failed to call the guests until as late as 3 o'clock P. M., and denies that its manager, or other agents in charge of said hotel assured the plaintiff, or any other guests of said Hotel that there was no danger and that there was no use for any of said guests to attempt to remove their property from their rooms; and denies that the plaintiff, relying upon any assurances upon the part of this defendant, its agents, or employees, permitted her property to remain in her room until it was impossible to remove it and it was destroyed. It denies that it placed guards in the hotel who refused to let plaintiff, or other guests, go to their rooms and remove property, and denies that it was guilty of any negligence whatsoever in failing to notify the plaintiff of the danger of falsely assuring her there was no danger, or in placing [fol. 22] guards in hotel to prevent plaintiff, or other guests, from removing their property from said hotel.

Third. It admits that said hotel was destroyed by fire on the 5th day of April, 1923, but avers that said fire happened without any fault or neglect on the part of the defendant or its servants, but was the result of an accident for which it is not responsible.

Fourth. Defendant alleges that if the plaintiff lost any property in said fire, the loss thereof was caused by and resulted from plaintiff's own negligence in not removing her effects from said hotel building after the same was known by her to be burning, and was also caused by and resulted from her further neglect, in so far as her jewelry, money and valuables for which recovery is sought herein are concerned, in not depositing same in a safe or vault which defendant had provided for such purpose, and of which the defendant had due notice.

Fifth. Further answering, defendant alleges that the legislature of Arkansas by act approved March 20, 1913, lim-

ited the liability of a hotel or innkeeper, and provided by said act that the owner of hotel or inn shall not be liable to its guests for loss of property caused by fire, except in cases where the fire was intentionally produced by the hotel keeper, or its servants. And defendant alleges that the fire in which the plaintiff claims to have lost his property was not caused or intentionally produced by it, or any of its servants, and it therefore pleads said act in bar of any liability to the plaintiff in this action.

Sixth. It is further provided in said act that an inkeeper shall not be liable for the loss of articles of value, provided [fol. 23] such hotel keeper should have a metal safe fit for the custody of such articles, and who shall keep the doors of sleeping rooms of guests safely fixed with locks and bolts, and suitable fastenings on the transoms in said rooms and keep a printed copy of said act constantly and conspicuously posted in not less than ten public places in said hotel, nor unless such guests should offer to deliver to the proprietor of the hotel such property for custody; and this defendant fully complied with all requirements in said act set forth to be kept and done by hotel keepers, but plaintiff did not at any time offer to deliver such property of his to defendant, nor did defendant refuse to accept same, and it therefore pleads said act in bar of the rights of plaintiff to recover herein.

Seventh. It is further provided in said act that hotel keepers shall not be liable to its guests in a sum in excess of $300 in any event, and defendant pleads said act in bar of said action in any sum said plaintiff may claim in excess of $300.00.

Eighth. It is further provided in said act that liability of an innkeeper should be that of a depository for hire, and said act limited the liability of an innkeeper to a maximum sum of $150 for each trunk and contents placed under its care, and it therefore pleads plaintiff is not entitled to recovery exceeding $150.00, if liable at all, and pleads said act in bar of his recovery in any sum in excess of $150.00.

Ninth. Further asnwering, the defendant admits that its hotel was situated upon the territory described in the com-

plaint and that said hotel was destroyed by fire on April [fol. 24] 5th, 1923. It admits that the State of Arkansas attempted by act of Legislature approved February 21st, 1903, to cede to the United States of America, exclusive jurisdiction over the territory described in said act and also described in the complaint herein, and that defendant hotel was situated on a part of the premises; and it admits that Congress, by act approved April 20th, 1904, attempted to accept the jurisdiction thereover, but it says that the act of Arkansas Legislature attempting to accept same were, and are, both null and void as being in conflict with the Constitution of Arkansas and the Constitution of the United States.

Defendant says that said territory over which jurisdiction was attempted to be ceded and accepted as aforesaid, is, and was at all times, owned by the United States, but that same is not used for any governmental purpose and is held by the United States solely in its proprietary capacity; that the only part of the said Reservation used for any governmental purpose is a tract remote and disconnected from the site of the Arlington Hotel; that the site occupied by the Arlington Hotel was situated in the northwest corner of said Reservation, and the only governmental agencies or purposes for which any of said Reservation is applied is for its Army and Navy Hospital which is situated in the southwest corner of said Reservation and separate from the defendant's Hotel site by a large space of ground that is not, and never has been used by the United States for any governmental purpose whatsoever, but, on the contrary, the site occupied by the defendant's hotel has been leased and let to it by the United States for hire for many years; and the entire west front of said Reservation lying between said hotel and the Army and Navy Hospital is [fol. 25] dedicated to Bath Houses, operated by private ownership under lease from the United States, just as was the defendant's hotel until its destruction by fire as aforesaid.

Further answering, the defendant alleges that on the 21st day of March, 1914, the Secretary of the Interior of the United States, acting under authority of an act of Congress approved October 24th, 1912, demised and let the

premises aforesaid constituting the site of the Arlington Hotel aforesaid to the defendant herein for a term of seventeen years, eleven months, and fourteen days from and including the 21st day of March, 1914, for an annual rental of $10,000 which was agreed to be paid, and was paid by the defendant to the United States regularly as provided in said lease until the destruction of said hotel at the time hereinbefore stated.

That if said Reservation was originally intended and designed to be used by the United States for governmental purposes, then, upon execution of said lease, the United States wholly abandoned it for said purpose, and whatever jurisdiction was conferred upon the United States by the act of Legislature of Arkansas aforesaid and accepted by Act of Congress aforesaid, ceased and determined when the government ceased to use same for governmental purpose, and especially in dealing with it in its proprietary capacity, and leasing and letting same for private use and gain.

That to deny the force and effect of said Act of Legislature of Arkansas, approved March 20th, 1913, as being in force and effect upon said premises of this defendant, would be to deprive the defendant herein of its property without [fol. 26] due process of law, and to deny it the equal protection of law, in violating of the fourteenth amendment to the Constitution of the United States.

Wherefore, having fully answered, the defendant prays that it be discharged herein with its costs.

Arlington Hotel Company, by Martin, Wootton & Martin, Attorneys.

[File endorsement omitted.]

[fol. 27] In Circuit Court of Garland County

[Title omitted]

Answer—Filed Oct. 14, 1926

The defendant, for its answer to the complaint of the plaintiff, says:

First. It denies that any property of the plaintiff was burned and destroyed in the fire which destroyed the Ar-

lington Hotel on April 5th, 1923, and denies that plaintiff was damaged as result of said fire in the sum of $1,500.00, or any other sum.

Second. Defendant denies that said hotel caught fire as early at 11 o'clock A. M. on April 5th, 1923, or that they neglected and failed to call the fire department or failed to call the guests until as late as 3 o'clock P. M., and denies that its manager, or other agents in charge of said hotel assured the plaintiff, or any other guests of said hotel that there was no danger and that there was no use for any of said guests to attempt to remove their property from their rooms; and denies that the plaintiff, relying upon any assurances upon the part of this defendant, its agents, or employees, permitted her property to remain in her room until it was impossible to remove it and it was destroyed. It denies that it placed guards in the hotel who refused to let plaintiff, or other guests, go to their rooms and remove property, and denies that it was guilty of any negligence whatsoever in failing to notify the plaintiff of the danger of falsely assuring her there was no danger, or in placing [fol. 28] guards in hotel to prevent plaintiff, or other guests, from removing their property from said hotel.

Third. It admits that said hotel was destroyed by fire on the 5th day of April, 1923, but avers that said fire happened without any fault or neglect on the part of the defendant or its servants, but was the result of an accident for which it is not responsible.

Fourth. Defendant alleges that if the plaintiff lost any property in said fire, the loss thereof was caused by and resulted from plaintiff's own negligence in not removing her effects from said hotel building after the same was known by her to be burning, and was also caused by and resulted from her further neglect, in so far as her jewelry, money and valuables for which recovery is sought herein are concerned, in not depositing same in a safe or vault which defendant had provided for such purpose, and of which the defendant had due notice.

Fifth. Further answering, defendant alleges that the legislature of Arkansas by act approved March 20, 1913,

limited the liability of a hotel or innkeeper, and provided by said act that the owner of hotel or inn shall not be liable to its guests for loss of property caused by fire, except in cases where the fire was intentionally produced by the hotel keeper, or its servants. And defendant alleges that the fire in which the plaintiff claims to have lost his property was not caused or intentionally produced by it, or any of its servants, and it therefore pleads said act in bar of any liability to the plaintiff in this action.

Sixth. It is further provided in said act that an innkeeper shall not be liable for the loss of articles of value, [fol. 29] provided such hotel keeper should have a metal safe fit for the custody of such articles, and who shall keep the doors of sleeping rooms of guests safely fixed with locks and bolts, and suitable fastenings on the transoms in said rooms and keep a printed copy of said act constantly and conspicuously posted in not less than ten public places in said hotel, nor unless such guests should offer to deliver to the proprietor of the hotel such property for custody; and this defendant fully complied with all requirements in said act set forth to be kept and done by hotel keepers, but plaintiff did not at any time offer to deliver such property of his to defendant, nor did defendant refuse to accept same, and it therefore pleads said act in bar of the rights of plaintiff to recover herein.

Seventh. It is further provided in said act that hotel keepers shall not be liable to its guests in a sum in excess of $300 in any event, and defendant pleads said act in bar of said action in any sum said plaintiff may claim in excess of $300.00.

Eighth. It is further provided in said act that liability of an innkeeper should be that of a depository for hire, and said act limited the liability of an innkeeper to a maximum sum of $150 for each trunk and contents placed under its care, and it therefore pleads plaintiff is not entitled to recovery exceeding $150, if liable at all, and pleads said act in bar of his recovery in any sum in excess of $150.00.

Ninth. Further answering, the defendant admits that its hotel was situated upon the territory described in the complaint and that said hotel was destroyed by fire on April

5th, 1923. It admits that the State of Arkansas attempted [fol. 30] by act of Legislature approved February 21st, 1903, to cede to the United States of America, exclusive jurisdiction over the territory described in said act and also described in the complaint herein, and that defendant hotel was situated on a part of the premises; and it admits that Congress, by act approved April 20th, 1904, attempted to accept the jurisdiction thereover, but it says that the act of Arkansas Legislature attempting to accept same were, and are, both null and void as being in conflict with the Constitution of Arkansas and the Constitution of the United States.

Defendant says that said territory over which jurisdiction was attempted to be ceded and accepted as aforesaid, is, and was at all times, owned by the United States, but that same is not used for any governmental purpose and is held by the United States solely in its proprietary capacity; that the only part of the said Reservation used for any governmental purpose is a tract remote and disconnected from the site of the Arlington Hotel; that the site occupied by the Arlington Hotel was situated in the northwest corner of said Reservation, and the only governmental agencies or purposes for which any of said Reservation is applied is for its Army and Navy Hospital which is situated in the southwest corner of said Reservation and separate from the defendant's hotel site by a large space of ground that is not, and never has been used by the United States for any governmental purpose whatsoever, but, on the contrary, the site occupied by the defendant's hotel has been leased and let to it by the United States for hire for many years; and the entire west front of said reservation lying between said hotel and the Army and Navy Hospital is dedicated to bath houses, operated by private ownership [fol. 31] under lease from the United States, just as was the defendant's hotel until its destruction by fire as aforesaid.

Further answering, the defendant alleges that on the 21st day of March, 1914, the Secretary of the Interior of the United States, acting under authority of an act of Congress approved October 24th, 1912, demised and let the premises

aforesaid constituting the site of the Arlington Hotel aforesaid to the defendant herein for a term of seventeen years, eleven months, and fourteen days from and including the 21st day of March, 1914, for an annual rental of $10,000.00 which was agreed to be paid, and was paid by the defendant to the United States regularly as provided in said lease until the destruction of said hotel at the time hereinbefore stated.

That if said Reservation was originally intended and designed to be used by the United States for governmental purposes, then, upon execution of said lease, the United States wholly abandoned it for said purpose, and whatever jurisdiction was conferred upon the United States by the act of Legislature of Arkansas aforesaid and accepted by act of Congress aforesaid, ceased and determined when the government ceased to use same for governmental purpose, and especially in dealing with it in its proprietary capacity, and leasing and letting same for private use and gain.

That to deny the force and effect of said act of Legislature of Arkansas, approved March 20th, 1913, as being in force and effect upon said premises of this defendant, would be to deprive the defendant herein of its property without due process of law, and to deny it the equal protection of law, in violation of the fourteenth amendment to the Con- [fols. 32-37] stitution of the United States.

Wherefore, having fully answered, the defendant prays that it be discharged herein with its costs.

Arlington Hotel Company, by Martin, Wootton & Martin, Attorneys.

[File endorsement omitted.]

[fol. 38] IN CIRCUIT COURT OF GARLAND COUNTY

No. 3912

R. T. FANT, Plaintiff,

vs.

ARLINGTON HOTEL COMPANY, Defendant

No. 3913

ELIZABETH H. FANT, Plaintiff,

vs.

ARLINGTON HOTEL COMPANY, Defendant

No. 3914

MARY L. FORTUNE, Plaintiff,

vs.

ARLINGTON HOTEL COMPANY, Defendant

JUDGMENT—March 21, 1927

These causes of action having been heretofore consolidated for trial, and having been set for trial on this date, comes now the plaintiffs, R. T. Fant, Elizabeth H. Fant, and Mary L. Fortune, in person and by their attorneys, Murphy & Wood, and comes also the defendant, Arlington Hotel Company, by its attorneys, Martin, Wootton & Martin, and these consolidated causes being now called for trial, all the parties to the action announce ready for trial, and the regular panel of the petit jury is called and come, and are sworn to answer questions touching their qualifications to serve as a trial jury in these consolidated causes, and Hamp Williams, and eleven others on the regular panel of the jury are examined and are by the court found to be [fol. 39] competent and are accepted by all the parties to these actions as a trial jury, and the jury having heard the evidence and the argument of the counsels and having received the instructions of the court, retire to consider of their verdict, and afterwards return into open court the following verdict, to wit:

"We, the jury, find for the plaintiffs against the defendant as follows; for the plaintiff, R. T. Fant, in the sum of Two Hundred Eighty Four 70/100 Dollars; for the plaintiff, Elizabeth H. Fant in the sum of Five Hundred Thirty Four 68/100 Dollars; for the plaintiff, Mary L. Fortune, in the sum of Three Hundred Sixty Six 24/100 Dollars.

"Interest included in the above amounts.

Hamp Williams, Foreman."

It is, therefore, by the court considered, ordered, and adjudged that the plaintiff, R. T. Fant, do have and recover from the defendant Arlington Hotel Company, the sum of Two Hundred and Eighty Four Dollars and Seventy Cents, with interest from this date at the rate of six per cent per annum; that the plaintiff, Elizabeth H. Fant, do have of and recover from the defendant, Arlington Hotel Company, the sum of Five Hundred and Thirty Four Dollars and Sixty Eight Cents, with interest from this date until paid at the rate of six per cent per annum; and that the plaintiff, Mary L. Fortune, do have of and recover from the defendant, Arlington Hotel Company, the sum of Three Hundred and Sixty Six Dollars and Twenty Four Cents, with [fols. 40-55] interest thereon from this date until paid at the rate of six per cent per annum; and that the said several plaintiffs also have and recover of and from the defendant their costs; and that execution issue against the defendant in favor of the several plaintiffs for the several amounts of the several judgments in favor of them, respectively.

[fol. 56] In Supreme Court of Arkansas

Opinion—March 12, 1928

Mehaffy, J.:

Three suits were begun in the Garland Circuit Court against the appellant and were consolidated by order of the court and tried together. The suits were to recover compensation for loss of baggage which was destroyed in the fire on April 5, 1923, when the Arlington Hotel was burned.

This is the second appeal in this case. The decision on the former appeal is in 170 Arkansas 440. When the suits were first brought in the Garland Circuit Court the court sustained a demurrer to the complaints of the plaintiffs and when the case was here before the court said that the demurrers presented a question, first, whether or not the courts of this state have jurisdiction to enforce civil liability which accrued within territory over which exclusive jurisdiction has been ceded by the State to the United States government; and second, whether or not a statute regulating civil liability, enacted after a cession of jurisdiction, is applicable to causes of action arising within that territory. And on the questions above mentioned which were passed upon by this Court in the former appeal, the decision on the former appeal is the law of the case on second appeal.

The court on the former appeal, after stating the questions raised by the demurrer, said: "Our conclusion in regard to the first question is that the courts of this State are not deprived by the State's cession to the general government of exclusive jurisdiction, of the right to exercise judicial power in the enforcement of rights of action in [fol. 57] civil matters which accrue in the ceded territory. We are not dealing with a local action, such as one which concerns the title to real estate, and what we say now must, of course, be confined to the character of action involved in these appeals. These are transitory actions which may be enforced anywhere that jurisdiction can be acquired over the person of the defendant. * * * The power of the State and general government over ceded territory has been discussed at length by the decisions of the Supreme Court of the United States in several cases."

The court then cites the cases that have discussed this question. Again the court said: "The next question presented is one which necessarily arises, but which counsel for appellee disclaims being presented in the present status of the case."

This second question is whether or not the statute regulating civil liability enacted after the cession of jurisdiction is applicable to causes of action arising within that territory. The court, it will be observed, held that this

question necessarily arose and it was stated: "We think it is equally clear that the statute was inoperative. The cession of jurisdiction was necessarily one of political power, and it took away the authority of the State government to legislate over the territory ceded to the general government." Fant v. Arlington Hotel Co., 170 Ark. 440.

Appellants also rely on the case of Williams v. Arlington Hotel Co., decided by the United States District Court for the Eastern District of Arkansas. This suit grew out of the same fire and after appellant's argument in this case was decided by the Court of Appeals. And the Court [fol. 58] of Appeals reached the same conclusion that was reached by this court in the case above referred to. The district court, in the case of Williams v. Arlington Hotel Company, sustained a demurrer to the petition and the Court of Appeals said: "We think the trial court was in error under the authority of the three so-called Leavenworth Reservation cases" (citing the cases), and the court then said of the cases relied on: "The above quotations show clearly that those cases involved portions of the reservation not being then used for military or other governmental purposes. Therefore, we think they are directly in point here as to the validity of the cession made by the State of Arkansas.

The McGlinn case is direct authority for the contention made by plaintiff in error that the laws of the State in existence at the time of the cession continue upon the reservation where not inconsistent with the laws of the United States or where not abrogated by Congress after the cession." Williams v. Arlington Hotel Co., Fed. Reporter 22, 2nd Series, 669.

It therefore seems settled by the above authorities that the laws in existence in the State of Arkansas at the time of the cession are still in effect upon the reservation as they are not inconsistent with the laws of the United States and have not been abrogated and that the law of 1913, relied on by appellant, is not operative.

Since we hold that the questions of law are settled by these authorities, it becomes unnecessary to decide any other question discussed by counsel.

The judgment of the Garland Circuit Court is, therefore, affirmed.

[fol. 59] In Supreme Court of Arkansas, March 12, 1928

Arlington Hotel Company, Appellant,

v.

Elizabeth Fant, Mary L. Fortune, and R. T. Fant, Appellees

Appeal from Garland Circuit Court

Judgment—March 12, 1928

This cause came on to be heard upon the transcript of the record of the circuit court of Garland County, and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same [fol. 60] is hereby, in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended, and have execution thereof.

[fol. 61] Petition for rehearing, covering 1 page, filed March 27, 1928, omitted from this print. It was denied without more.

[fols. 62 & 63] In Supreme Court of Arkansas

Order Denying Rehearing—April 9, 1928

Being fully advised, the petitions for rehearing filed in the following causes are by the Court severally overruled, viz:

* * * * * * *

[fol. 64] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 27, 1928

Now comes the Appellant, Arlington Hotel Company, and files herewith its petition for appeal on writ of error, and says that there are errors in the record and proceedings in the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignment of errors:

1. The Supreme Court of Arkansas erred in holding and deciding that the Act of the Legislature of the State of Arkansas, Approved March 29, 1913, and appearing in Crawford & Moses' Digest of the Statutes of Arkansas at Sections 5559 to 5573, both inclusive, was not in force and effect upon the permanent Reservation of the United States at Hot Springs, Arkansas, on the 5th day of April, 1923. The validity of said sections of the Statutes of Arkansas as related to the said territory comprising the permanent Hot Springs Reservation were drawn in question by the appellant on the ground that the jurisdiction of the State of Arkansas over said territory was complete and in full force and effect thereon, and that in holding that the State of Arkansas was without jurisdiction upon and over said territory is repugnant to that part of Section 1 of the 14th [fol. 65] Amendment to the Constitution of the United States, which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

2. The Supreme Court of Arkansas erred in holding and deciding that an Act of the Legislature of the State of Arkansas approved February 21, 1903, attempting to cede exclusive jurisdiction over said territory to the United States was valid. The validity of said Act was denied and drawn in question by the appellant, Arlington Hotel Company, on the ground of its being repugnant to that part of Section 1 of the 14th Amendment of the Constitution of the United States which provides that no state shall "deprive any person of life, liberty or property without due process of law."

3. The Court erred in holding said Act of the Legislalature of Arkansas, approved February 21, 1903, to be valid.

The validity of said Act was denied and drawn in question by the appellant, Arlington Hotel Company, on the ground of its being repugnant to that part of Article 1, Section 8, of the Constitution of the United States which provides that the United States shall "exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

4. The Supreme Court of Arkansas erred in holding that the Act of Congress approved April 20, 1904, (33 Stat., 187) pretending to accept cession of exclusive jurisdiction, which had been attempted to be ceded to the United States by said Act of the Legislature of Arkansas, approved February 21, 1903, was valid. The validity of said Act was denied and drawn in question by the Appellant, Arlington Hotel [fol. 66] Company, upon the ground of its being repugnant to that part of Section 8, Article 1, of the Constitution of the United States, particularly set out in the last foregoing Assignment of Errors.

5. The Supreme Court of Arkansas erred in holding and deciding that said Act of the Legislature of Arkansas, approved February 21, 1903, attempting to cede exclusive jurisdiction over said territory to the United States, and the said Act of Congress approved April 20, 1904, attempting to accept such section of exclusive jurisdiction for and on behalf of the United States were valid. The validity of said holding and decision was denied and drawn in question by the appellant, Arlington Hotel Company, on the ground of its being repugnant to Section 4, Article 4, of the Constitution of the United States, which provides that "the United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and upon application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."

6. The Supreme Court of Arkansas erred in examining the action of the trial Court in rendering judgment against the appellant, Arlington Hotel Company.

For which errors the appellant, Arlington Hotel Company, prays that the judgement of the Supreme Court of the State of Arkansas, dated March 12, 1928, be reversed, and the order of the Supreme Court of the State of Arkansas, dated April 19, 1928, denying the petition for rehearing in said case, be set aside and a judgment rendered in favor of appellant, and for costs.

Martin Wootton & Martin, by H. Martin, Attorneys for Appellant, Arlington Hotel Company.

[File endorsement omitted.]

[fol. 67] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed April 27, 1928

Considering itself aggrieved by the final decision of the Supreme Court of Arkansas in rendering judgment against it in the above entitled cases, the appellant hereby prays an appeal or writ of error from said decision and judgment to the Supreme Court of the United States, and an order fixing the amount of a supersedeas bond.

Assignment of errors herewith.

Martin, Wootton & Martin, Attorneys for Appellant, Arlington Hotel Company.

STATE OF ARKANSAS, ss:

SUPREME COURT

Let the writ of error issue upon the execution of a bond by Arlington Hotel Company to Elizabeth H. Fant, Mary L. Fortune and R. T. Fant in the sum of two thousand dollars ($2,000.00); such bond when approved to act as a supersedeas.

Dated 26th day of April, 1928.

Jesse C. Hart, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fol. 68] Bond on writ of error for $2,000, approved and filed April 27, 1928, omitted in printing.

[fol. 69] IN SUPREME COURT OF ARKANSAS

WRIT OF ERROR—Filed April 27, 1928

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Arlington Hotel Company and Elizabeth H. Fant, Mary L. Fortune and R. T. Fant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant under the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the Arlington Hotel Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C. within thirty

days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the [fols. 70 & 71] United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 27th day of April, in the year of our Lord one thousand, nine hundred twenty-eight.

Sid B. Redding, Clerk District Court of the United States, Western Division, Eastern District of Arkansas, by W. P. Feild, D. C. (The Seal of the District Court Western Division U. S. A.)

Allowed. Jesse C. Hart, Chief Justice Supreme Court of Arkansas.

[File endorsement omitted.]

[fols. 72 & 73] Citation, in usual form, showing service on Murphy Wood, omitted in printing.

[fol. 74] IN SUPREME COURT OF THE UNITED STATES

POINTS ON WHICH APPELLANT OR PLAINTIFF IN ERROR INTENDS TO RELY AND PARTS OF RECORD TO BE PRINTED—Filed June 5, 1928

1. That the Supreme Court of Arkansas erred in holding that the Act of the Legislature of the State of Arkansas, approved February 21, 1903, whereby said Legislature of Arkansas attempted to cede exclusive jurisdiction to the United States over the territory on which the Arlington Hotel was situated, was a valid exercise of legislative power by the State of Arkansas, and in holding that the Act of Congress, approved April 20, 1904, whereby Congress accepted said session of legislation by the Legislature of Arkansas was valid.

2. That the Supreme Court of Arkansas erred in holding that the Act of the Legislature of Arkansas, approved March 20, 1913, limiting the liability of hotel keepers in the

State of Arkansas was not in force on said United States Reservation whereon the said Arlington Hotel was situated at the time it was destroyed by fire.

3. That said Act of the Legislature of the State of Arkansas, approved February 21, 1903, and the said Act of Congress, approved April 20, 1904, are both invalid as being in conflict with Section 1 of the 14th Amendment to the [fol. 75] Constitution of the United States, which provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws." That it was also in violation of that part of Article 1, of Section 8 of the Constitution of the United States, which provides that the United States shall "exercise exclusive legislation in all cases, whatsover, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." That said Act of the Legislature of Arkansas, approved February 21, 1903, and the said Act of Congress, approved April 20, 1904, are void as being repugnant to Section 4, Article 4 of the Constitution of the United States, which provides that "the United States shall guarantee to every state in this union a republican form of government."

In support of the foregoing points, the appellants and plaintiffs in error intend to rely for the consideration thereof upon the following parts of the record, to-wit:

1. Complaints of the Plaintiffs.
2. The Demurrers of the Defendants.
3. Answers of the Defendants.
4. Opinion of the Supreme Court of Arkansas.
5. Judgment of the Supreme Court of Arkansas.
6. Petition for rehearing in Supreme Court of Arkansas.
7. Order of the Supreme Court of Arkansas denying Petition for rehearing.
8. Petition for Appeal or Writ of Error.
9. Assignment of Errors.
10. Writ of Error.
11. Citation.
12. Bond.

[fols. 76 & 77] Hot Springs, Arkansas, June —, 1928.

We, attorneys of record, for Elizabeth H. Fant, Mary L. Fortune, and R. T. Fant, the appellees and defendants in error, in the above entitled cause, hereby acknowledge due service of the above and foregoing statement of points relied upon by the appellants and plaintiffs in error in the above entitled cause.

Murphy & Wood, Attorneys for Elizabeth H. Fant, Mary L. Fortune & R. T. Fant.

Endorsed on cover: File No. 33,466. Arkansas Supreme Court. Term No. 1014. Arlington Hotel Company, plaintiff in error, vs. Elizabeth H. Fant, Mary L. Fortune, and R. T. Fant. Filed May 26th, 1928. File No. 33,466.

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DEC 10
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IN THE

Supreme Court of the United States

October Term, 1928.

ARLINGTON HOTEL COMPANY, *Plaintiff in Error,*

v. No. 157.

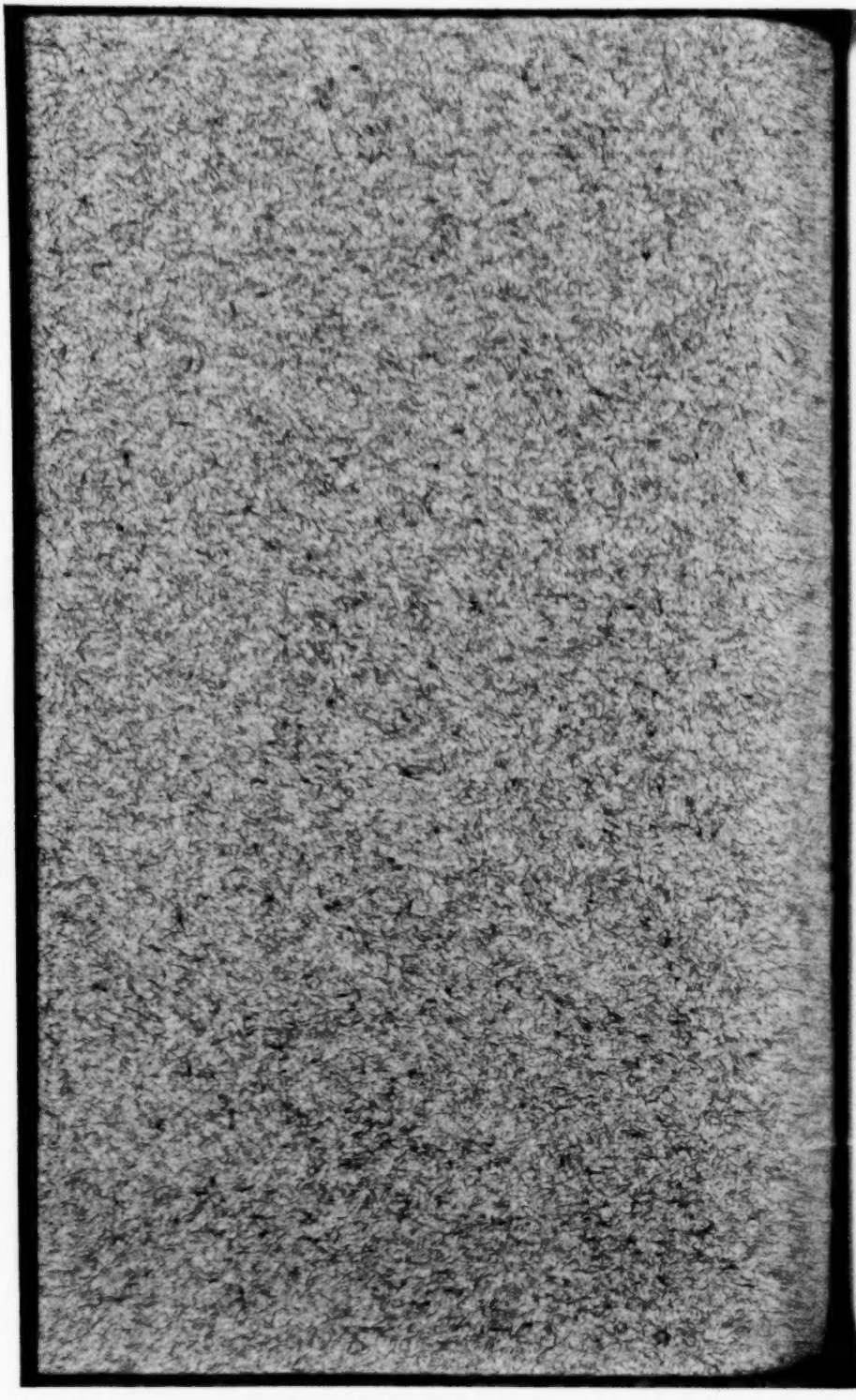
ELIZABETH H. FANT, MARY L. FORTUNE AND R. T. FANT, *Defendants in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

WILLIAM H. MARTIN,
Hot Springs, Arkansas,

E. HARTLEY WOOTTON,
Hot Springs, Arkansas,

THOMAS K. MARTIN,
Hot Springs, Arkansas,
Attorneys for Plaintiff in Error.



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IN THE

Supreme Court of the United States

October Term, 1928.

ARLINGTON HOTEL COMPANY, ... *Plaintiff in Error,*

v. No. 157.

ELIZABETH H. FANT, MARY L. FORTUNE AND R. T. FANT, ... *Defendants in Error.*

BRIEF FOR PLAINTIFF IN ERROR

I.

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Arkansas is reported in *Arlington Hotel Company* v. *Fant* (March 12, 1928, 176 Arkansas 613).

II.

JURISDICTION

1. The date of the judgment of the Garland Circuit Court is March 21, 1927 (R. 21-22).

The date of the judgment of the Supreme Court of Arkansas affirming this judgment is March 12, 1928 (R. 22).

Petition for rehearing filed in due course in the Supreme Court of Arkansas was denied April 9, 1928 (R. 25).

Petition for writ of error was duly filed and allowed and writ of error was duly issued on April 26, 1928 (R. 28).

2. Plaintiff in error herein was defendant in the trial court and appellant in the Supreme Court of Arkansas.

The Supreme Court of Arkansas erred in holding that the Act of the Legislature of the State of Arkansas approved February 21, 1903, whereby said Legislature attempted to cede exclusive jurisdiction to the United States over the territory on which the Arlington Hotel was situated, was a valid exercise of legislative power by the State of Arkansas, and erred in holding that the Act of Congress approved April 20, 1904, whereby Congress accepted said cession of legislation by the Legislature of Arkansas, was valid.

The Supreme Court erred in holding that the act of Arkansas approved March 20, 1913, limiting the liability of hotel keepers in the State of Arkansas, was not in force on said United States Reservation whereon the Arlington Hotel was situated at the time it was destroyed by fire.

3. The jurisdiction of this court is properly invoked under section 237 (a) of the Judicial code as amended. (Code of Laws of U. S. A. in force in December, 1926, p. 906, Sec. 344).

III.

STATEMENT OF THE CASE

The question at issue is whether an act of the Legislature of Arkansas, enacted March 29, 1913, general in its terms, limiting the liability of innkeepers, is in effect on

that part of the permanent Hot Springs Reservation, over which exclusive jurisdiction was ceded to the United States by act of the Legislature of Arkansas approved February 21, 1903, (Acts of Ark. 1903, Act 30), which cession was accepted by Act of Congress of April 20, 1904 (33 Stat. 187).

HISTORY OF HOT SPRINGS RESERVATION

Title to the land embraced in the Hot Springs Reservation passed to the United States by the Louisiana Purchase in 1803.

Section 3 of the Act of Congress, April 20, 1832, is as follows:

> "And be it further enacted, that the Hot Springs in said territory, together with four sections of land, including said springs, as near the center thereof as may be, *shall be reserved for the future disposal of the United States,* and shall not be entered, located or appropriated for any other purpose whatever." (The italics are ours) (4 Stat. 505).

At the time of the passage of that act, Arkansas was still a territory. Upon her admission to statehood in 1836, she came on an equal footing with all of the other States, nor was there any reservation of jurisdiction to the United States over the area embraced in the territory reserved from sale by the Act of Congress establishing the Reservation.

Notwithstanding the reservation from sale or entry, divers persons set up claims to the lands reserved. Strife and litigation ensued between them and continued until, in order that all the controversies might be finally determined, Congress, by Act of May 31, 1870, (16 Stat. 149) provided that all persons asserting claims of any character

whatsoever to the Hot Springs might, within ninety days after the passage of the act, institute suits against the United States in the Court of Claims, to settle the title, and prosecute same to final decision. Claims not filed within ninety days were barred. It was made the duty of the attorney general to defend the action.

Under authority of said act, all the various claimants filed their bills and the case proceeded to judgment in the Court of Claims, where a decision adverse to all of the Claimants was made. An appeal to the Supreme Court was prosecuted, and the decision of the Court of Claims was affirmed. (Hot Springs Cases, 92 U. S. 698).

Thereafter, by act of March 3, 1877 (19 Stat. 377), a Commission was created to lay off into lots and blocks the four sections of land originally reserved from sale, awarding to actual occupants a preferential right to purchase. By the same act the Commission was directed to lay off and designate a tract embracing the Hot Springs, which, by the terms of the act, was reserved from sale. It is upon this tract so reserved that the Arlington Hotel was constructed, and was operated under lease from the United States for more than fifty years, until its destruction by fire on April 5, 1923. It is for the loss of property in this fire that these actions were brought.

The State of Arkansas, by act of its Legislature, approved February 21, 1903, ceded exclusive jurisdiction to the United States over a portion of the territory permanently reserved by the United States, a correct description of the area over which jurisdiction was so ceded being set out in the complaint, and which embraces, with a large tract of other property, the area of one acre of land on which the Arlington Hotel stood. The usual reservations for service of process and the right to tax privately owned

personal property on the reservation, were contained in the act of cession. (Acts of Arkansas 1903, Act 30).

Congress accepted the cession by act approved April 20, 1904 (33 Stat. 187).

By act of Legislature of Arkansas approved March 29, 1913, the comon law liability of innkeepers, (theretofore held to be analogous to that of an insurer, see *Pettit* v. *Thomas*, 103 Ark. p. 593) was repealed, and the innkeeper's liability for loss to guests by fire limited to cases where the fire resulted from negligence of the innkeeper or his servants. (C. & M. Digest Stat. of Ark. 1921, Sec. 5564-5567).

It is the contention of defendants in error that because of the act of cession by the Legislature of Arkansas above referred to and its acceptance by Congress, no statute enacted by Arkansas subsequent to the act of cession is in effect upon the area over which it had ceded jurisdiction, and that the common law liability of an innkeeper was not affected by the act of Legislature limiting its liability.

This appeal challenges that contention, which is the sole issue in the case.

ARGUMENT

The small area on which the Arlington Hotel stood lies in the extreme northwest corner of the permanent reservation, and the land was never at any time occupied or used by the United States for any governmental purpose, and is not now. On the contrary, prior to the decision in the Hot Springs cases (92 U. S. 698), the hotel had been operated on that site, and after it was adjudged to be the property of the government, it and its predecessor continued to occupy it and conduct a hotel thereon, continuously until its destruction by fire, under license or lease from the United States.

It is to be observed that the Reservation as originally made, did not purport to reserve it for any governmental purpose, but "for the future disposal of the United States." (Sec. 3, act of Congress, April 20, 1832; 4 Stat. 505). In fact, no part of this reservation has been used for governmental purposes, with the possible exception of the building and maintenance thereof, of an Army and Navy Hospital on a portion thereof at a considerable distance from the hotel. That institution stands at the southwest corner of the permanent reservation, at the most remote point possible from where the Arlington Hotel stood. Much space, in fact nearly the entire "Bath House Row," lies between the two. This hospital was built in 1886, more than fifty years after the act of Congress reserving it from sale, up to which time no part of the Reservation was occupied or used for governmental purposes. The plaintiff in error had been occupying its premises and conducting its hotel thereon as lessees of the government for a great many years prior to the erection of the hospital, and continued to do so without break, under successive renewals of its lease, until the hotel was destroyed by fire in April, 1923.

FOR WHAT PURPOSES, AND OVER WHAT AREA MAY THE UNITED STATES ACQUIRE AND EXERCISE EXCLUSIVE JURISDICTION OVER LANDS LYING WITHIN THE GEOGRAPHICAL BOUNDARIES OF A STATE?

The only provision in the Constitution for the exercise of exclusive legislation by the United States is found in Art. 1, Sec. 8. After providing for the exercise of such legislation over the seat of government to be acquired by cession from the States, it recites that it shall, "exercise like authority over all places purchased by consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings."

This reservation was not acquired by purchase by the government by the consent of the Legislature of Arkansas. The title comes to the United States by purchase from France and the treaty of 1803. The territory of Arkansas, later the State of Arkansas, was carved out of this great domain.

Should it be argued that the general government, as the owner of the territory, could, on the admission of Arkansas to statehood, have admitted her upon such terms and with such reservation as it chose, it may be conceded. In fact, the State was admitted upon terms clearly set out in the act of admission, but reservation of jurisdiction over the Hot Springs Reservation was not among the terms.

The States are wholly without power to legislate in any case whatever, affecting territory purchased by the government for the purposes designated in the Constitution with consent of the Legislature of the State. But in cases where the Government acquires land under the power of eminent domain, or by cession by the States, or by pur-

chase, or by any means whatsoever, except by purchase by consent of the Legislature to enable it to properly function in its governmental capacity, the State may exercise any and all jurisdiction over the territory thus acquired in all cases and to any extent, subject only to the limitation that if upon the lands so acquired the government shall erect any public buildings, the State may not legislate, or otherwise exercise jurisdiction over the portions thus used, in any manner that would impair their usefulness for the governmental purposes to which they are applied. But with that exception only, the State retains jurisdiction to the same extent as over all other places within her limits.

The above propositions are sustained by the authorities hereinafter quoted.

There are three decisions of the United States Supreme Court, generically known as the "Fort Leavenworth cases" in which these questions are exhaustively and luminously considered.

They are:

Ft. Leavenworth R. R. Co. v. *Lowe*, 114 U. S. 525, 29 L. Ed. 264.

Chicago, Rock Island & Pacf. Ry. Co. v. *McGlinn*, 114 U. S. 542, 29 L. Ed. 270.

Benson v. *U. S.*, 146 U. S. 325, 36 L. Ed. 991.

All of these cases involved the question of jurisdiction over the Fort Leavenworth Military Reservation in Kansas. The United States originally owned and had jurisdiction over it, precisely as over all of Arkansas, including the Hot Springs Reservation. Kansas was admitted to statehood in 1861, on the usual terms of equality with the other States, no reservation of jurisdiction over the

military reservation being contained in the act of admission. In 1875 the Legislature of Kansas by act thereof, ceded to the United States exclusive jurisdiction over the Reservation, in identical terms with the act of the Legislature of Arkansas, the reservations of jurisdiction made by the State differing slightly but in no way affecting the present question. The Lowe case involved the right of Kansas to levy a tax upon that part of the railroad lying upon the reservation, the right to tax property thereon being reserved to the State in the act ceding jurisdiction. The levy was sustained by the Kansas courts and affirmed by the U. S. Supreme Court on appeal.

The discussion of the questions raised is elaborate and the conclusions and distinctions clearly stated. It is there held, as hereinbefore stated, that over places purchased by the government with consent of the Legislature, the legislative power of the government is exclusive of that of the State. That when property is acquired otherwise than by purchase by consent of the Legislature for governmental purposes, the State retains full jurisdiction over the territory, except that it may not interfere with governmental agencies in any manner that would destroy or impair their usefulness for the purpose for which they are designed or used. That a State in ceding jurisdiction to the government may annex any conditions not inconsistent with the grant. That upon and after the admission of Kansas to statehood the government's rights in the Ft. Leavenworth Reservation not used for military purposes were only those of an ordinary proprietor. We quote from the decision:

> "So far as the land constituting the Reservation was not used for military purposes, the possession of the United States was only that of a proprietor. The State could have exercised with regard to it the same authority and jurisdiction which she could have exer-

cised over similar property held by private parties." (114 U. S. 541).

The contention of the defendant in error in this case is that the act of the Legislature of Arkansas, limiting the liability of innkeepers, is not in force on the Reservation, because enacted subsequent to cession by the Legislature of Arkansas of jurisdiction to the United States. They found this contention wholly upon the familiar doctrine, that when territory is acquired by conquest or cession, all laws of the country ceding or conquered, affecting individual rights, and not inconsistent with the laws of the new sovereign, remain the law of the land until repealed or altered by the new sovereign. With this doctrine we have no quarrel. But the United States cannot acquire jurisdiction over territory lying within a State for any purpose whatsoever, except to enable it to function within its own orbit and perform its own governmental duties and obligations. Any attempt of the State to cede other jurisdiction or any attempt by the United States to accept and exercise it would be contrary to our plan of government and in violation of the constitution. For the purposes of this case it is not necessary to inquire into the general validity of the ceding act. But in a proper case it might be asked with deep seriousness whether the State did not overstep its own powers in attempting to abdicate. The ceding act does not purport to be for the use of the United States in its governmental capacity. It is general and unqualified in its terms.

It is a matter of local history well known that this cession of jurisdiction was not made by the Arkansas Legislature to confer any benefit on the government, or to aid it in the performance of, or discharge of, its duties. It was just an effort to unload upon the general government the responsibility of dealing with a local situation, with

which the municipal authorities were, or thought they were unable to cope. The jurisdiction ceded was not needed by the government, nor has it been exercised for national or governmental purposes. If the exclusive jurisdiction of the State could be ceded for the real purposes intended, then no limit can be drawn as to the extent to which it might be carried. It might just as well have extended to the entire city of Hot Springs, or to Garland County, or to all property in Arkansas belonging to the United States, or, as was said by the late Judge Trieber in rendering the opinion of the United States District Court for the Eastern District of Arkansas in the case of *Williams* v. *Arlington Hotel Company* (15 Fed. 2d, 412), a case involving the same state of facts presented in this case:

> "If the contention of counsel for plaintiff is to be sustained, and the opinion of the State Supreme Court followed, the Legislature of the State may cede exclusive jurisdiction to the national government over all the public lands in the State, owned by the United States, (about two million acres), and deprive the State of all jurisdiction over these lands. In fact it may cede jurisdiction over any territory of the State, even if not owned by the government. That the framers of the Constitution never intended such a cession is beyond question." (15 Fed. 2d, p. 412).

That would be unseemly, it is true, but not more so, except upon a larger scale, than the present contention, that inhabitants of that portion of the Reservation embraced in the act of cession, although not used or needed for governmental purposes, are neither bound or protected by the general laws of the State of Arkansas.

So long as the United States limits its activities to the performance of its governmental obligations, it and its agencies are exempt from State interference, but when it assumes the role of landlord, its tenants are bound by

the laws of Arkansas, notwithstanding the State may endeavor to rid herself of her duties, or the United States to undertake their performance. The site of the Arlington Hotel has never been devoted to or used for any governmental purpose of any character. It has always been used by the United States solely in its capacity of owner and landlord, for profit, and the United States cannot, in that capacity, acquire or accept jurisdiction of any character over it, that would remove it from subjection to the laws of the State. If it were otherwise it would have been competent for the United States prior to the eighteenth amendment, but at a time when the sale of liquor was forbidden in Arkansas, to have permitted saloons upon the reservation. A situation so grotesque is not to be thought of. And yet to say that a hotel keeper operating within that territory may not have the protection of general remedial laws passed by the State for the benefit of her citizens, is not more unseemly. Further from the Lowe case:

> "Where therefore lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification; that if upon them forts, arsenals, or other public buildings are erected for the use of the general government, such buildings with their appurtenances as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed; such is the law with reference to all instrumentalities created by the general government * * * but when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits." (114 U. S. 539).

And, again, after a statement that the State and government may deal with each other in the way they may

deem best, to carry out the purposes of the constitution, and if to effectuate such purpose a cession of jurisdiction by the State would be more effective, that no objection in such case could be maintained, the court adds:

> "Such cession is really as much for the benefit of the State as it is of the United States. It is necessarily temporary, *to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State.*" (The italics are ours). (114 U. S. 542).

It was said in the opinion of the U. S. District Court hereinbefore referred to (*Williams* v. *Arlington Hotel Company*, (15 Fed. 2d, 415):

> "All these questions having been fully discussed, and by the court, in a carefully prepared opinion, determined, they cannot be treated as *obiter*. The well settled law is: 'Where there are two or more grounds upon either of which the appellate court may rest its decision, and it adopts more than one, the ruling of neither is *obiter*, but each is the judgment of the court and of equal validity with the other.' *Railroad Company* v. *Schutte*, 103 U. S. 118, 143; *Union Pacific Co.* v. *Mason City Co.*, 199 U. S. 160, 166; *United States* v. *Title Ins. & Trust Co.*, 265 U. S. 472, 486.
>
> "Besides every part of that opinion has been followed without question by all the courts, federal as well as State, and no part of it ever questioned or doubted." (15 Fed. 2d, 415).

The U. S. District Court further stated in this same opinion:

> "It must, therefore, be conceded that a cession of jurisdiction by a State to the national government to lands not acquired by purchase with the consent of the State but owned by it in its proprietary capacity, does not exempt such lands from control or interference by legislation of the State, unless the subsequent

> legislation of the State is of a nature, which will affect or embarrass the effective use of the premises for governmental purposes, or perhaps changed by an Act of Congress, a question not involved in the case at bar, and not decided." (15 Fed. 2d, 415).

The McGlinn case, (*C. R. I. & P. Ry. Co.* v. *McGlinn*, 114 U. S. 542) was decided on the same day as the Lowe case (*Ft. Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525). The opinion is devoted mainly to a restatement of what had been decided in the Lowe case, but the decision sheds additional emphasis upon the issues here. The court speaking of what had been decided in the Lowe case, said:

> "This point was involved in the case of *Fort Leavenworth R. R.* v. *Lowe*, *ante* 525. We there held that a building on a tract of land owned by the United States used as a fort, or for other public purposes of the Federal government, is exempted, as an instrumentality of the government, from any such control or interference by the State as will defeat or embarrass its effective use for those purposes. But, in order that the United States may possess exclusive legislative power over the tract, except as may be necessary for the use of the building thereon as such instrumentality, they must have acquired the tract by purchase, with the consent of the State. This is the only mode prescribed by the Federal Constitution for their acquisition of exclusive legislative power over it. When such legislative power is acquired in any other way, as by an express act ceding it, its cession may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended. We also held that it is competent for the Legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its power, the use of the places being, in fact, as much for the people of the State as for the people of the United States, generally, and such jurisdiction necessarily ending, when the places cease to be used for those purposes." (114 U. S. 545).

Later in the same case:

> "The government of the State of Kansas, extended over the Reservation, and its legislation was operative therein, except so far as the use of the land as an instrumentality of the general government may have excepted it from such legislation. *In other respects the law of the State prevailed.*" (The italics are ours). (114 U. S. 547).

There was no allegation, and it was not argued on the presentation of the case below that the act of 1913 of the State of Arkansas, in any manner interfered with the control or management of the hospital, park, or other uses of the Reservation by the government, or, that it could in any manner defeat, affect, or embarrass its effective use for any governmental purpose by the United States. That the leasing by the government of the property upon which the hotel stood could in no way interfere with the use of the Reservation for governmental purposes, was determined by Congress when it authorized the Secretary of the Interior to lease the property to private interests. It can hardly be contended that the State of Arkansas would have attempted to cede exclusive jurisdiction to the government in order to enable the government, in turn, to lease it for the purpose of operating a public hotel upon the premises.

In the McGlinn case, *supra*, the court was considering a statute of the State of Kansas, enacted prior to the act ceding jurisdiction over the reservation, and held that it was in force.

The Benson case, *supra*, and which completes the trinity of the Ft. Leavenworth cases, dealt with the conviction of the defendant in a district court of the United States, for a murder committed on a farm lying within the area of the Ft. Leavenworth Military Reservation. It was

not made to appear whether the farm was used in connection with the Federal prison located upon the Reservation. The court held that the District Court had jurisdiction. The decision quotes with approval from the McGlinn case its interpretation of the decision in the Lowe case, holding that it is competent for the Legislature to cede to the General government, exclusive jurisdiction over places needed by it in the exercise of its powers, "such jurisdiction necessarily ending when the places cease to be used for those purposes." The court further held with regard to defendant's claim that the part of the Reservation where the crime was committed, was used solely for farming purposes, that inasmuch as the entire tract had been reserved for military purposes the courts would follow the political department. Note the wide difference between the Ft. Leavenworth Reservation and the Hot Springs. The former was created and the Reservation made for "military purposes," one of the essential needs of the government, and recognized in the constitution as such. But in the case at bar, the tract was reserved from sale or entry "for the future disposal of the United States." Not for the *use* of the United States for any purpose at all, but merely for its "*future disposal*," and it appears from the complaint that the United States by leasing to the defendant had definitely dedicated it to private purposes.

The Leavenworth cases have been cited and followed in all subsequent decisions of like questions. In the Lowe case the main point actually necessary to decide was the validity of a reservation of the right to tax, contained in the act of cession. In the McGlinn case the question was, whether an act of the Kansas Legislaure passed prior to the act of cession was in force on the Reservation. It was held to be in force. In the Benson case the question was whether a federal court had jurisdiction of a crime com-

mitted on a part of the military reservation, but used for farming. The jurisdiction was sustained. The question presented on this appeal is whether an act of the Legislature of Arkansas, general in its terms and remedial in its purposes, but enacted subsequent to the act ceding jurisdiction to the general government, is in force on the Reservation.

The only case we have been able to find in which the precise question was presented, is *Crook, Horner & Co.* v. *Old Point Comfort Hotel Company, et al.*, reported in 54 Fed. 604, *et seq.* The purpose of that action was to adjudge the priorities of liens on the Chamberlain Hotel, erected on land of the United States ceded by the State of Virginia, on which the hotel had been built by the hotel company under a lease executed to it by the Secretary of War, acting under authority of an act of Congress and consented to by Virginia by an act of her General Assembly. The act of cession by the General Assembly of Virginia was passed in 1821. It authorized the Governor of the State to convey the lands to the United States. The cession of jurisdiction was in terms identical with the act of the Legislature of Arkansas now under consideration, but the reservations therein were different. It contained a reservation of the right of the State to execute process civil and criminal upon the territory ceded, which seems to be a clause found in all acts of cession, for obvious reasons. It also contained a reverter clause. The consent of Virginia to the erection of the hotel was a waiver of the reverter clause. The hotel encountered financial troubles and the action was to establish priority of liens. The Virginia code of 1887 gave to mechanics, etc., a lien for their services, prior to mortgages, although the mortgage lien might be senior in time. The statutory lien was upheld and sustained by the decision, thus holding that a general act of the Legislature of Virginia passed sixty-six years after the act ceding jurisdiction, was in effect upon the ceded territory.

The opinion was delivered by Judge Hughes, a judge of great ability and eminence. The decision is based primarily upon the Ft. Leavenworth cases which are thoroughly analyzed and applied. Judge Hughes notes that the McGlinn case involved the question whether a statute of Kansas enacted prior to the act ceding jurisdiction to the United States over the Ft. Leavenworth Military reservation, remained in force after the cession, and remarked that the case he was then deciding appeared to be one of first impression as to the effect of an act of cession. He held that the Virginia act, although passed more than half a century later than the ceding act, was the law within the ceded territory. In the course of the opinion, he says:

> "It would seem to be equally clear that, except as to the parts of that territory not in actual use by the Federal Government for military purposes, whether appropriated to other purposes or not, the jurisdiction of the State is concurrent with that of the United States, and that such laws of the State of Virginia as are not incompatible with those of the United States affecting that territory, and as do not conflict with the free use by the United States of the parts of the land actually used for military purposes, are themselves in force, and constitute the rule of conduct for the government of all inhabitants there who do not belong to the Army of the United States." (54 Fed. 610).

The reasoning which leads to that conclusion applies here with greater force. We are confronting a situation where jurisdiction was ceded to the general government, not upon request of the government, nor for any governmental purpose of a character provided or contemplated by the constitution, or by any theory of the relation of the States to the Union. It appears nowhere that this cession was needed or convenient to enable the government to perform any of its functions or obligations. It was a cession pure and simple to enable the United States to enter upon

the governing of the ceded territory. A purpose, we conceive, beyond the power of the State to authorize, or of the government to assume. We repeat by way of emphasis that the part of the ceded territory involved in this action was never needed or used by the government for any governmental purpose whatever, but, on the contrary, was for long before the ceding act, and continuously thereafter, leased to private interests for gain, just as an ordinary individual proprietor would manage his estate.

The U. S. District Court in its opinion in the Williams case (15 Fed. 2d, 416) quoted with approval the following language from the case of *Crook, Horner & Co.* v. *Old Point Comfort Hotel Co. et al.*, 54 Fed. 604:

> "It seems to me to be a necessary and an inevitable conclusion that the Chamberlain property has reverted jurisdictionally to Virginia, subject to such continued control by the United States as may be necessary to the discipline of the military post and the effective use of the post for military purposes. Subject to these limitations, it results that the laws of Virginia of a general character, such as do not conflict with the purposes for which the United States hold the land at Fortress Monroe, are in force there, especially in the places like the Chamberlain Hotel, which have been appropriated to other than the military purposes for which only they were ceded by Virginia. If these conclusions be not true, then except State laws, more than half a century old, the hundreds of inhabitants engaged in civil pursuits and residing at Old Point Comfort are living in a No-Man's Land, and, except in a criminal sense, are as completely outlaws as if they were at Botany Bay." (54 Fed. 611).

In *United States* v. *Tucker*, 122 Fed. 518, 520 (D. C.), it was held: "In the opinion of the court, both a purchase with the consent of the State and an express cession of jurisdiction are not necessary to the powers and rights of the government. Either will be sufficient, if the place is

owned by the United States *and is actually used for governmental purposes.*" (The italics are ours).

The foregoing cases are the ones directly in point.

The case of *Barrett* v. *Palmer*, reported in 135 N. Y. 336, was an action of trespass for ejecting a tenant from demised premises in Brooklyn. The *locus in quo* was originally part of the Brooklyn Navy Yard over which jurisdiction had been ceded to the United States by the State of New York in 1853. The Federal authority subsequently leased, or permitted the city of Brooklyn to lease, that part of the premises involved in the action for a market. The defense rested upon its denial of the jurisdiction of the State courts. The Court of Appeals of New York sustained the jurisdiction on authority of the Ft. Leavenworth cases, and held under those decisions that at least until Congress should make regulations touching the administration of justice in civil cases arising thereon, the municipal law of the State would remain unchanged. This case dealt with the State laws in force at the time of the cession of jurisdiction, but the court commented with distinct approval upon the limitation of jurisdiction in the general government, so carefully expressed in the Ft. Leavenworth cases.

This case was affirmed by the Supreme Court in 160 U. S. 400; 40 L. Ed. 1015.

It may be suggested by counsel for defendants in error that there is nothing contained in the decision in *Benson* v. *U. S.*, 146 U. S. 325, that supports the decision of the District Court in *Williams* v. *Arlington Hotel Co. supra,* to the effect that the farm upon the Ft. Leavenworth Reservation was used for the purpose of raising food for the sustenance of the prisoners confined in the Federal Penitentiary located upon that

reservation. It is true that there is no express finding of that fact, but, on the contrary, there is nothing to show that it had been leased or was being operated for private purposes. The presumption would be that the land was used for purposes connected with the administration of the governmental institution on the Reservation, and in that State of the record the presumption would follow that it was being used for purposes of the government. However, it affirmatively appears from the complaint in the instant case that the government, if it ever used the site of the Arlington Hotel for public purposes, had abandoned it. The lease by the government to the defendant in error is conclusive upon the question of abandonment, as was stated in the case of *Williams* v. *Arlington Hotel Company,* (15 Fed. 2d, 416).

> "When lands, over which jurisdiction has been ceded to the United States by a State, are leased, by authority of an act of Congress, to a private person for private uses, it is in effect a relinquishment of the exclusive jurisdiction, amounts to a recession thereof to the State and invests the State with complete jurisdiction over such leased land, or to state it more accurately suspends the jurisdiction of the United States, while the land is occupied and used by the lessee for private uses. It has been so held in *Benner* v. *Bennett,* 21 Ohio St. 431; *State* v. *Board of Commissioners,* 153 Ind. 302, 54 N. E. 809; *La Duke* v. *Melin,* 45 N. Dak. 349, 177 N. W. 673."

It is true that the case of *Williams* v. *Arlington Hotel Company,* (15 Fed. 2d, 416) has been overruled by the Circuit Court of Appeals, (*Williams* v. *Arlington Hotel Company* (22 Fed. 2d, 669), but it appears to us that the legal reasoning of Judge Trieber of the District Court in reaching his conclusion is both sound and correct.

The Circuit Court of Appeals in its opinion, altogether lost sight of the fundamental differences sought to be

shown by the plaintiffs in error between the Leavenworth Reservation and the Hot Springs Reservation, wherein we sought to point out the difference in the authority of the government in matters pertaining to its governmental powers, as opposed to its powers as an ordinary proprietor of land. In the former, the reservation was for "military purposes," an unquestioned and apparent governmental purpose. In the latter, it was "for future disposal by the United States," an unquestioned and apparent nongovernmental purpose. In the first instance, the Leavenworth Reservation was and is being used for military purposes, and always has been, as evidenced by the fact that at all times since it was reserved by the United States it has been one of the largest military posts in the country, where troops and military forces have at all times been quartered. In the latter instance, that portion of the Hot Springs Reservation occupied by the Arlington Hotel never was and is not now being used by the United States for any governmental purpose, or for any other purpose for that matter, other than the leasing of it to the Arlington Hotel Company for profit and the latter's private use.

A reservation created for "military purposes" on its face implies that it is to be put to a governmental usage; one for "future disposal" on the other hand does not carry such implication, and affirmative action, such as the leasing to a private corporation to enable it to engage in commercial pursuits for its private gain, is unmistakable evidence of the fact that it was not intended to be put to a governmental purpose.

The Court of Appeals, in its opinion in the Williams case *supra*, quoting from the Benson case (146 U. S. 331) uses the following language:

> "It is contended by appellant's counsel that within the scope of those decisions jurisdiction passed to the

> general government only over such portions of the reserve as are actually used for military purposes, and that the particular part of the reservation on which the crime was committed was used solely for farming purposes. But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes." *U. S.* v. *Stone*, 2d. Wall. 525-537 (17 L. Ed. 765).

This court in the Benson opinion was of course, dealing with the Fort Leavenworth Reservation, which as stated by the court had been reserved in its entirety for "military purposes." And under such a reservation the court correctly decided it would follow the action of the political department of the government and would not inquire as to what actual use any portion of the territory within the reservation was put.

As indicative of the purpose for which the Hot Springs Reservation was originally made, we find that Congress provided for and caused the entire four sections reserved to be subdivided into lots, blocks and streets, which comprise the present city of Hot Springs. This, with the exception of a few hundred acres on which the Hot Springs are actually located, and on a part of which reservation the Arlington Hotel was constructed under authority of a lease executed to it by the Department of the Interior, is a carrying out of the purposes stated in the act of reservation, i. e., "*future disposal by the United States.*" (Act of March 3, 1877, (19 Stat. 377) Sections 3 and 4).

Pursuing the policy of "*future disposal by the United States*" provided for in the original reservation, by act of Congress dated March 3, 1877, (19 Stat. 377), and December 16, 1878, (20 Stat. 256), a permanent Hot Springs Reservation was set aside and the Secretary of the Interior was directed to lease the site of the Arlington Hotel to the then

proprietor thereof, and also to lease the sites of existing bath houses and sites for the building of other bath houses. By act of Congress, March 3, 1891, (26 Stat. 842), the Secretary of the Interior was again authorized and empowered to make similar leases, and by act of August 24, 1912, (37 Stat. 479) he was authorized to make the lease under which the plaintiff in error held at the time of the fire.

With the doctrine that the courts, on a question of jurisdiction, will not inquire into, but will follow the action of the political department of the government, no fault is found, but it is contended that the rule is not applicable in the present case. In the Benson case, *supra,* cited and relied upon by the Circuit Court of Appeals, the political department of the government had determined that the Leavenworth Reservation was needed for military purposes and it was reserved for such purposes. No such language explaining the uses to which the Hot Springs Reservation was to be put, was used by the government in making the Hot Springs Reservation. In the one case, the intention of the political department of the government was plain and unmistakable, and its intention for the utilization of the Leavenworth Reservation for governmental purposes has been carried out. In the other, its ultimate intention is indefinite, and its action in leasing to the plaintiff in error the part of the reservation on which the Arlington Hotel stood is clearly indicative of the fact that it was not intended for use for governmental purposes and of course never was used for such purposes.

The Hot Springs Reservation, in so far as the language of the reservation itself is concerned, clearly indicates that it was not being reserved for any governmental use, and certainly the leasing of a portion of it on which the Arlington Hotel stood belies the inference that it was. The same may be said of the provision and practice of

leasing portions of it for bath house purposes. If it was not reserved for governmental purposes, nor used for such, then the laws of the State of Arkansas were in full force and effect on such parts thereof as were demised to private interests for gain.

This case has been twice before the Supreme Court of Arkansas. The first appeal was from a judgment of the trial court sustaining a demurrer to the complaint. (*Fant* v. *Arlington Hotel Company*, 170 Ark. 440). The cause was reversed with directions to overrule the demurrer, the court holding that the act of the Legislature of Arkansas of 1913, (C. & M. Digest, Sec. 5567) was not in force upon the Reservation.

Upon new trial of the case, judgment was rendered against the plaintiff in error, from which an appeal was taken to the Supreme Court of Arkansas, and affirmed. (*Arlington Hotel Company* v. *Fant*, 176 Ark. 613-616). The Supreme Court of Arkansas held that the former decision by that court was the "law of the case" on the second appeal.

The Supreme Court of Arkansas in both decisions failed to note the distinction between property acquired and used by the Government for the purposes enumerated in section 8 of article 1 of the Constitution of the United States, or when not so acquired, devoted to governmental purposes, as opposed to the mere ownership of property by the government in its proprietary capacity. It is this distinction which is now sought to be drawn in the case at bar, and which appears to us to have been so clearly and conclusively settled in the Fort Leavenworth cases.

In *Fant* v. *Arlington Hotel Company, supra,* the Supreme Court of Arkansas said:

> "We think it is equally clear that the statute, (Act of 1913) was inoperative. The cession of jurisdiction

> was necessarily one of political power and it took away the authority of State Government to legislate over territory ceded to the general government. This point is expressly decided by the Supreme Court of the United States in the Lowe case." (p. 444).

The court to sustain this conclusion quoted the following excerpt from the opinion in the Lowe case:

> "These authorities are sufficient to support the proposition, which follows naturally from the language of the Constitution, that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with her consent *for one of the purposes designated;* and that such consent, under the Constitution, operates to exclude all other legislative authority." (p. 444). (The italics are ours).

This quotation from the Supreme Court of Arkansas indicates that the court did not have in view the distinction between *"the purposes designated,"* as against property acquired and jurisdiction ceded for purposes not designated in the Constitution, and for property not needed or used by the government for any of its governmental uses or needs.

Neither was this distinction noted in the decision of the Circuit Court of Appeals in the Williams case, *supra.*

In the Lowe and McGlinn cases, the statutes of the State of Kansas, which were sustained, had been enacted prior to the act of the Legislature of Kansas ceding exclusive jurisdiction to the United States. In that respect they differ from the case at bar. They also differ from the case at bar in the circumstance that the Fort Leavenworth Reservation was dedicated to governmental purposes enumerated in the Constitution, and used continuously thereafter for such purposes, up to the present time.

The power of a State to cede exclusive jurisdiction, as well as the power of the United States to accept such cession over territory not devoted, used or needed for governmental purposes, has not as yet been decided, so far as we have been able to discover. The case of *Crook, Horner & Company* v. *Old Point Comfort Hotel Company,* (54 Fed. R. 604) *et seq,* more nearly resembles the case at bar than any we have been able to discover. In that case a statute of the State of Virginia enacted more than half a century after the cession of jurisdiction by the State, was held to be operative upon the reservation, notwithstanding the reservation was acquired by the government in strict conformity with section 1, article 8, of the Constitution. The case now submitted is upon the facts more strongly in favor of the plaintiff in error, for the reason that the territory involved in the instant case was not acquired under the constitutional provision and was not devoted to or used for governmental purposes.

The contention of defendant in error is obnoxious to article 4, section 4, of the Constitution of the United States, which is as follows:

> "The United States shall guarantee to every State in this Union a Republican form of Government * * *."

We construe this guarantee to mean that all of the inhabitants of the State are guaranteed uniform and equal protection under the laws of the State. If the contention of the defendant in error shall be sustained, the above guarantee will fail, for it is obvious that inhabitants of the Hot Springs Reservation would not have equal and uniform protection, or be bound by the same laws as other inhabitants of the State. As a matter of course, the government without violation of the above guarantee, can enact all laws

necessary for the protection of its property and governmental rights, but to hold that laws enacted by the State of Arkansas subsequent to the act of cession are inoperative on the reservation, would fasten upon the State two systems of laws, one applying to all citizens of the State living outside of the reservation, and another and different code applying to all those residing upon the reservation. And so it would turn out that inhabitants of the reservation would be bound by laws different from those in force in the rest of the State, and would be subjected to Federal jurisdiction in the ordinary affairs of civil life, whereas the rest of the State would have their rights adjudicated under the laws of the State.

The importance of the issues now presented is obvious.

Respectfully submitted,

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FILED
JAN 3 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1928.

ARLINGTON HOTEL COMPANY ..... *Plaintiff in Error,*

v. No. 157.

ELIZABETH H. FANT, MARY L. FORTUNE AND R. T. FANT ..... *Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR

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STATEMENT

As has been stated by counsel for the plaintiff in error the issue in this case is whether or not the act of the Arkansas Legislature passed March 29, 1913, (Crawford & Moses' Digest, Sections 5564-5567 inclusive) was in force in the territory on which the hotel belonging to the plaintiff in error was situated at the time the property of the defendants in error was destroyed in the hotel on the 5th day of April, 1923, by the fire which destroyed the hotel on that date. If the act of the Arkansas Legislature is applicable these actions cannot be sustained, but, if the act is not applicable the judgment of the Supreme Court of Arkansas must be affirmed.

It is conceded that exclusive jurisdiction of the territory on which the hotel was situated was ceded by the

State of Arkansas, to the United States, by act of the Arkansas Legislature approved February 21, 1903, that the cession was accepted by the United States by the Act of Congress passed April 20, 1904, (33 Statutes , 187), but counsel for the plaintiff in error contend that the cession cannot apply to the territory on which the Arlington Hotel was situated because the hotel was never used by the United States, but was operated by the plaintiff in error for its own profit.

There is nothing in the record before this court which shows how the United States uses the ceded territory and the view we take of the case is that it will be presumed that the national government needed the exclusive jurisdiction which Congress accepted from the State; but on the theory that the court will take judicial knowledge of the territorial extent of the jurisdiction of the United States, and the facts on which such jurisdiction is based, we deem it proper to state some of the uses to which the ceded territory is put, and to call attention to some facts which may have led to the acceptance and exercise of exclusive jurisdiction by the national government.

The uses of the ceded territory were practically the same at the time of the fire, April 5, 1923, as they were at the time exclusive jurisdiction was ceded to and accepted by the United States.

By the Act of Congress of April 20, 1832, four sections of land, including the Hot Springs, were reserved for future disposal by the United States (4 Stat. 500 Sec. 3).

By the act of March 3, 1877 (19 St. 377) the President appointed three commissioners who laid off the Reservation into lots and blocks, streets and alleys. The last mentioned act provided:

> "Section 4. That before making any subdivision of said lands, as described in the preceding section, it

shall be the duty of said board of commissioners, under the direction and subject to the approval of the Secretary of Interior, to designate a tract of land included in one boundary, sufficient in extent to include, and which shall include all the hot or warm springs situate on the land aforesaid, to embrace, as near as may be, what is known as Hot Springs Mountain, and the same is hereby reserved from sale, and shall remain under the charge of a superintendent, to be appointed by the Secretary of the Interior: Provided, however, that nothing in this section shall prevent the Secretary of the Interior from fixing a special tax on water taken from said springs, sufficient to pay for the protection and necessary improvement of the same."

The board of commissioners pursuant to the act of 1877 laid off and designated the Hot Springs Reservation and the designation was approved by the Secretary of the Interior. The territory included in the act of the Legislature of the State of Arkansas, ceding exclusive jurisdiction to the United States, (act Feb. 21, 1903), and in the Act of Congress accepting the cession, (Act of Congress, April 20, 1904) (33 Stat. 187) forms only a part of the original Hot Springs Reservation.

By the Act of Congress of June 16, 1880 (21 Stat. 288) the area of the permanent Reservation was increased:

"Section 3. That those divisions of the Hot Springs Reservation, known as the mountainous districts, not divided by streets on the maps made by the commissioners, but known and defined on the map and in the report of the commissioners as North Mountain, West Mountain, and Sugar Loaf Mountain, be, and the same are hereby forever reserved from sale, and dedicated to public use as parks, to be known, with Hot Springs Mountain, as the permanent Reservation."

Section 3, act June 16, 1880 (21 Stat. 288).

By the act of June 30, 1882, (22 Stat. 121), Congress appropriated one hundred thousand dollars for the erection of an Army and Navy Hospital on the Government Reservation at, or near, Hot Springs, Arkansas.

The Army and Navy Hospital was completed about the year 1884 and has been enlarged from time to time since then, and is located within the territory described in the act ceding jurisdiction to the United States.

The area included in the cession of jurisdiction, is a strip of land fronting about 1,800 feet on Central Avenue, the main street of the city of Hot Springs, the ceded territory being bounded on the west by Central Avenue, on the north by Fountain Street, on the east and south by Reserve Avenue, which meanders along the base of the mountain. We estimate the dimensions of the ceded territory to be 1,800 by 4,000 feet. The Arlington Hotel, which was destroyed by fire, April 5, 1928, was located in the ceded territory on the corner of Central Avenue and Fountain Street in the northwest corner of the ceded territory, and the Army and Navy Hospital buildings are located on the south side of the ceded territory near the southwest corner thereof, fronting on Reserve Avenue, the hospital buildings being about 1,000 feet from the site of the Arlington Hotel, which was burned.

On that portion of the ceded territory abutting on Central Avenue a number of bath houses are located. These bath houses are operated by lease holders under the control of the superintendent of the Reservation and the Secretary of the Interior. The water from the Hot Springs, owned by the United States, is used in these bath houses, the leaseholders paying a stipulated tax for the water used; and many people from all parts of the United States, and from other countries, come to Hot Springs to bathe in the waters from the Hot Springs. The revenue

received by the Government from the water is used to improve the park and Government buildings on the Reservation. The Secretary of the Interior has general supervision of the bath houses, and has a complete set of rules and regulations governing them. The rules adopted by the Interior Department regulate the charges for the baths, the number and qualifications of the employees of the various bath houses, and every other matter affecting the interest of the people who bathe in these places.

The Arlington Hotel used the water from the Hot Springs in its hotel, and its bath attendants, superintendent of baths, and some of its servants were under the supervision of the Interior Department.

Besides the bath houses, the Army and Navy Hospital, and the Arlington Hotel, there were situated on the ceded territory various comfort stations for the use of the public, the Administration building, occupied by the offices of the superintendent of the Reservation and his assistants, a band pavilion, power houses, ice plants, barns, garages, green houses for flowers and plants, the resident of the superintendent of the Reservation, the residence of the chief clerk of the superintendent, an observation tower and elevator, various rest pavilions, all of the Hot Springs with their inclosures, and other necessary structures. The portion of the territory not occupied by the buildings is used as a park, and the park is attractively landscaped and has paved and graveled driveways, paths and trails running through it, and is lighted with electric lights furnished by the power plant situated on the territory. The park is continuous from the Army and Navy Hospital to the Arlington Hotel and is used by patients of the hospital, as well as by other persons. In fact the Arlington Hotel, the Army and Navy Hospital, and all of the other buildings referred to are located in the Government park.

and the grounds around all of these buildings form the park, the park being an appurtenance of the hospital, the hotel, and all the other buildings

A large majority of the guests at the hotel and the people who use the park and patronize the bath houses are visitors from other States.

The act of the Arkansas Legislature, approved February 21, 1903, ceded exclusive jurisdiction over the part of the Hot Springs Mountain Reservation, above described, to the United States, reserving to the State only the right to serve process in the territory, and to tax privately owned property therein. The cession of exclusive jurisdiction was unconditionally accepted by the Act of Congress of April 20, 1904 (33 Stat. L). At the time the cession was accepted the United States had a criminal code applying to offenses committed in the territory under the exclusive jurisdiction of the United States (Crim. Code Sec. 272 *et seq.*) and in the accepting act Congress provided that the United States District Court of the Eastern District of Arkansas should have jurisdiction of all offenses committed within the boundaries of the ceded territory, and also made provisions for punishing certain offenses committed in said territory; and provided that if any act should be committed within said territory which would constitute an offense under the Municipal Ordinances of the City of Hot Springs, or the laws of the State of Arkansas, but which is not prohibited, or the punishment of which is not specially provided for by the laws of the United States, regulations of the Secretary of Interior, or by the accepting act itself, the offender should be subject to the same punishment fixed by the ordinances of the city of Hot Springs, or the laws of the State of Arkansas, at the time of the commission of the offense. The act also provided for procedure in arresting and prosecuting offenders.

When the Arkansas Act ceding the jurisdiction was passed the city of Hot Springs was and had been policing the territory, but when Congress accepted the cession the city of Hot Springs withdrew its officers from the ceded territory and the United States took over the work of policing it, and all offenses committed in the ceded territory, since the United States assumed jurisdiction of it, have been tried in the United States Courts, and the State of Arkansas has not attempted to exercise any jurisdiction over the territory in question, and the courts of the State have held the exclusive jurisdiction to be in the United States.

Faut v. *Arlington Hotel Co.*, 170 Ark. 440.

Arlington Hotel Co. v. *Faut*, 176 Ark. 612.

II.

ARGUMENT

We construe the opinions in the Fort Leavenworth cases, *Ft. Leavenworth Ry. Co.* v. *Lowe*, 114 U. S. 525; *C. R. I. & P. Ry. Co.* v. *McGlinn*, 114 U. S. 542; *Benson* v. *U. S.*, 146 U. S. 325, to hold that a State and the United States may deal with each other in any way they may deem best to carry out the purpose of the Constitution, and that the duty of determining what jurisdiction is needed in order to carry out the purposes of the Constitution is a political matter.

On the last mentioned point see also the following cases:

Jones v. *United States*, 137 U. S. 202.

Foster v. *Neilson*, 2 Peters (U. S.) 254.

United States v. *Arredondo*, 6 Peters (U. S.) 691.

State v. *Dunwell*, 3 R. I. 127.

Bedel v. *Loomis*, 11 N. H. 9.

State v. *Bowman*, 89 Ark. 428.

As we understand the opinion in the Lowe case, the key to the decision of the court is contained in this statement, found in the next to the last paragraph of the opinion:

> "The two, the State and the General Government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution."

The court in that case clearly held that it is competent for the Legislature of a State to cede exclusive jurisdiction over places needed by the General Government in the

execution of its powers. The opinion in that case sets out the different degrees of jurisdiction which the General Government may have, under different circumstances, of land lying within the boundaries of a State, but nowhere in the opinion does the court qualify the conclusion contained in that part of the opinion above quoted. The portions of the opinion chiefly relied on by counsel for plaintiff in error are applicable to the jurisdiction before the State ceded exclusive jurisdiction to the United States, and are erroneously applied by counsel to the jurisdiction as it now exists.

The court in the McGlinn case, *supra*, construed the opinion in the Lowe case, and said in referring to the opinion in the Lowe case:

> "We held that it is competent for the Legislature of a State to cede exclusive jurisdiction over places needed by the General Government in the execution of its powers, the use of the places being in fact as much for the people of the State as for the people of the United States generally, and such jurisdiction necessarily ending when the places cease to be used for those purposes."

From the statement of the court that a State and the United States may deal with each other in any way they may deem best to carry out the purposes of the Constitution the question naturally arises, what department of the Government must decide the question of what jurisdiction is needed to carry out the purposes of the Constitution?

This court in *Benson* v. *United States*, *supra*, answers this question and leaves no chance for any doubt. The question in the Benson case was whether or not the United States had jurisdiction to try a man for murder committed on the Fort Leavenworth Reservation, on a part of the Reservation which was used as a farm at the time the

offense was committed. It was contended by the defendant in error that within the scope of the decisions in the Lowe case and McGlinn case jurisdiction passed to the General Government only over such portions of the Reservation as were actually used for military purposes, and that since the part of the reservation where the offense was committed was used solely for farming purposes and was not used by the Government in the execution of its powers, the United States had no jurisdiction, but this court in that case said:

> "In matters of that kind the courts follow the political department. The entire tract had been legally reserved for military purposes. The character and purpose of its occupation having been fixed by that branch of the Government which has control of such matters, it is not open to the courts on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put."

The Circuit Court of Appeals in *Williams* v. *Arlington Hotel Company*, 22 Federal 2d, 669 answered the argument by which counsel for plaintiff in error seek to distinguish the instant case from the Ft. Leavenworth cases by calling attention to the fact that in every one of those cases the controversy arose over a part of the Reservation, which was in private use, the same as was the Arlington Hotel in the instant case. The Lowe case grew out of the efforts of the plaintiff in error to recover from the State of Kansas taxes paid under protest on its railroad property in the Reservation, the plaintiff in error contending that the Reservation by the State of the right to tax private property in the ceded territory was void, and that the State had no right to tax the railroad property in the ceded territory; and the court held, that although it was competent for the State to cede exclusive jurisdiction to the United States, the State could reserve any right it might desire to reserve, if the right reserved did not interfere

with the use the United States wished to make of the territory.

The McGlinn case grew out of the killing of a cow on the railroad right-of-way of the plaintiff in error, the contention on one side being that the law of the State of Kansas, which existed at the time the jurisdiction was ceded, making every railroad company in the State liable to the owner for the full value of cattle killed by the operation of its railway, was not in force in the ceded territory, and on the other side the contention was that, while the exclusive jurisdiction was placed in the United States by the cession of exclusive jurisdiction to it by the State of Kansas, the laws of the State which were in force at the time the jurisdiction was ceded and which were not in conflict with any law of the United States, remained in effect until Congress should see fit to change them.

The Benson case grew out of a homicide committed on a farm within the boundaries of the Reservation, and the contention of the plaintiff in error was the same as the contention of the plaintiff in error in the instant case, that the jurisdiction did not pass to that part of the territory which was not being actually used by the United States. In every one of these cases the territory in question was used for private profit, just as was the Arlington Hotel in the instant case.

Counsel for plaintiff in error say that exclusive jurisdiction was not needed by the United States. We do not consider that question open to argument. The acceptance of such jurisdiction and the exercise of it by the United States for twenty years is conclusive of the question. We have called attention to the fact that the Army and Navy Hospital and many other Government buildings are on the ceded territory. We have never heard it suggested that the jurisdiction of the United States must end at the walls

of its buildings. On the contrary it is for the political department of the Government to decide how far the jurisdiction must extend. It seems to us there was more need for placing the jurisdiction of the portion of the Hot Springs Reservation covered by the Arlington Hotel in the United States than there was for placing jurisdiction of the two railroad rights-of-ways, and the farm involved in the Ft. Leavenworth cases in the United States.

The Arlington Hotel was in the same place and being operated in the same way when the political department of the United States declared that it needed the jurisdiction of the territory by accepting the cession of jurisdiction and exercising it. There has been no change in the conditions.

Counsel for the plaintiff in error emphasize that part of the opinions which say the jurisdiction of the United States over such places is necessarily temporary and must end as soon as the Government ceases to use the places. As we construe the opinions cited the use of the place by the Government must cease entirely before its jurisdiction can be declared at an end; and the mere fact that private persons or corporations are given the right to use a part of the territory does not oust the jurisdiction of the United States. It seems to us that the jurisdiction would necessarily continue until the adoption of an Act of Congress ceding it back to the State, or until the executive departments of the United States ceased to exercise the jurisdiction and let it go back to the State. It would certainly be impractical to treat the jurisdiction as reverting to the State whenever some small part of the ceded territory might be devoted to private use, and as coming back to the United States when the private use ceases. The jurisdiction could not be made to shift like a shuttle back and forth between the State and the United States.

We cannot conceive of any situation in which the courts would deny the territorial jurisdiction of the United States after the Legislature of a State has ceded the exclusive jurisdiction of the territory in question to the United States, and Congress has accepted it, the highest court of the State has upheld the act of the State Legislature ceding the jurisdiction, and the executive and judicial departments of the United States have for years been exercising jurisdiction of such territory.

We do not believe there is any basis for the fear expressed by counsel for the plaintiff in error that the State may sacrifice the rights of the people by ceding jurisdiction of large portions of the State to the United States, if the act of the Arkansas Legislature in the instant case is upheld. The judicial department is not the only department of government charged with the duty of guarding the rights of the State. The other departments must decide for themselves what is best for the State and the people and the extent of their own power, and in some cases, as in the instant case, the decision of the other departments is necessarily final and binding on the judicial department. The natural jealousy of the rights of the State will prevent the ceding of jurisdiction of any large area within the boundaries of a State. These cessions will be confined in the future as they have been in the past to cessions of jurisdiction of the buildings and the appurtenances used by the Government and comparatively small tracts used as national parks.

The executive and legislative departments of the State and United States have in several instances decided that the State had the right to cede to the United States exclusive jurisdiction of the lands belonging to the United States used as public parks.

Exclusive jurisdiction of Yosemite National Park was ceded by the California Legislature, and was accepted by Congress by an Act of Congress June 2, 1920. 41 Stat. 731.

The Legislature of the State of Washington ceded exclusive jurisdiction over Mt. Ranier National Park. Congress accepted the cession by the act of June 30, 1916, 39 Stat. 243.

The Montana Legislature ceded exclusive jurisdiction of Glacier National Park and Congress accepted it in 1914. 38 Stat. 699.

The Legislature of California ceded exclusive jurisdiction of Sequoia and General Grant National Parks, and Congress accepted it January 2, 1920, 41 Stat. 731.

There are other instances where exclusive jurisdiction has been ceded by the State to the United States of parks, and cemeteries owned by the United States, but those mentioned above will suffice to show how the Legislative and Executive Departments of the State and Federal Government have construed their powers.

Article 4, section 3, second paragraph, of the Constitution gives Congress the power to make all needful rules and regulations respecting the territory and other property belonging to the United States. We believe the power is given to Congress by this section to use the property of the United States in the way Congress deems best for the welfare of the people of the United States.

Van Lear v. *Eisele*, 126 Fed. 823.

Robbins v. *U. S.*, 284 Fed. 39.

Camfield v. *U. S.* 167 U. S. 525.

If such power is not expressly given it will be implied.

United States v. *Gettysburg Electric Ry. Co.*, 160 U. S. 668.

The curative values of the Hot Waters were recognized long before Congress passed the act reserving the lands on which the Hot Springs of Arkansas were situated.

"According to traditions the curative properties of the springs were known to the Indians long before the advent of the Spaniards. There is a tale that the various tribes battled from time to time for control of the hot waters, in which they believed the "Great Spirit" to be ever present, but that finally a truce was declared under which their benefits were extended to the sick of all tribes."

The Interior Department of the Government maintains a free bath house and clinic at Hot Springs, where thousands secure without cost the benefit of the hot waters, but the Government has not confined the use of the water to the free bath house, but has leased sites for bath houses along the base of the Hot Springs Mountain to private persons and corporations, and the lessees have constructed bath houses on plans approved by the Secretary of the Interior, in which baths are given for pay, under the supervision and control of the Interior Department.

If the Congress has the power to permit the hot waters to be used as they are being used, then they are being used to carry out the purposes of the Constitution, and Congress has the right to determine what jurisdiction the Federal Government needs to best carry out such purposes. Congress has the power to establish national parks for the use of the people of the United States and has the right to have exclusive jurisdiction of such parks whenever Congress and the State Legislature deem such jurisdiction the best way

to secure to the people of the United States the benefits of these parks.

We consider the opinions in the Fort Leavenworth cases broad enough to sustain the cessions by the States to the United States of exclusive jurisdiction of the National Parks; and within the scope of those cases the cession of the State of Arkansas in the instant case can be sustained on three different grounds: 1. On the ground that the land included in the cession is used for a hospital and other needful buildings. 2. That the land is a National Park, and 3. The jurisdiction is needed for the more efficient use of the hot springs.

If the National Government, in order to more efficiently use a National park for the benefit of the people, may have exclusive jurisdiction of it, why would the jurisdiction have to end at the walls of a hotel placed in the park for the accommodation of the people for whose benefit the park has been established and is being maintained? If the jurisdiction is needed to protect these people while they are visiting the park it would certainly be an anomalous situation which would deprive them of the needed protection in the very part of the territory in which it would be probably needed most.

Counsel for plaintiff in error intimate in their brief that the cession of jurisdiction by the State of Arkansas was merely an effort of the State to shirk a hard job and unload it on the National Government. We do not agree with them, but it is probably true that the National Government had found that the people invited to use the hot waters and park were being preyed upon by quacks and swindlers, and needed the strong arm of the United States for their protection. But, as we understand the law, all speculations as to the motives for taking exclusive jurisdiction of the territory is useless, because we are bound

by the decision of Congress and must assume there was a proper and sufficient reason for it. The courts cannot command the political department of the Government in matters of this kind to come into court and tell the reasons for its actions. The question belongs to the other departments and the courts have nothing to do except follow their decision.

The case of *Cook-Horner Co.* v. *Old Point Comfort Hotel Co.*, 54 Fed. 604, is not applicable to the instant case. In that case the court had only to construe the act of the Virginia Legislature, which contained this clause:

> "And be it further enacted that should the United States at any time abandon the said land, or appropriate them to any other purpose than those indicated in the preamble of this act that then, and in that case, the same shall revert to and revest in this Commonwealth."

After this act was passed the United States leased part of the land for a hotel and a hotel had been built on it, and the court held under the condition in the act above quoted the jurisdiction reverted to the State and that both the State and National Governments had treated the jurisdiction as having reverted.

Counsel for plaintiff in error argue that the leasing of the Arlington Hotel site was an abandonment of the jurisdiction, but they overlook the fact that the hotel was there and being operated on the same conditions when the jurisdiction was ceded and accepted as when the fire burned the hotel. The tenancy of the Arlington Hotel has, however, always been temporary, being merely a tenancy for a term of years, the lease having been renewed from time to time.

Counsel repeatedly refer to the act of 1832 reserving the Hot Springs land for future disposal, but they must

have overlooked the terms of the act of 1877 which directs the commissioners, "To lay off a tract sufficient to include the Hot Springs, to embrace as near as may be the Hot Springs Mountain," and provides that "the same is hereby reserved from sale and shall remain in charge of a superintendent to be appointed by the Secretary of the Interior." (19 Stat. 377), and the act of 1880 adding Sugar Loaf Mountain, North Mountain and West Mountain to the permanent reserve and dedicating them to public use as parks, to be known, *with Hot Springs Mountain, as the permanent Reservation.* There is no question about the uses intended for the Hot Springs Mountain. It was intended that the nation's soldiers and sailors and all the people of the United States should get the fullest possible benefit from the Hot Springs, and the national park established around them, and that they should be forever protected from selfish exploitation.

Counsel for plaintiff in error repeatedly refer to the statement in the case of *Benson* v. *United States, supra,* that the entire tract had been reserved for military purposes and they say that the purposes for which the territory in the instant case was reserved was not stated. Probably the reason the court in the Benson case stressed the purposes set out in the Reservation is that there was never in that case any act of Congress accepting the cession of jurisdiction as there was in the present case. If there had been an acceptance of jurisdiction by Congress in the Benson case the court would have treated the act of Congress accepting jurisdiction as conclusive.

Section 4 of article 4 of the Constitution does not apply to the instant case, as counsel for the plaintiff in error contend. The Constitution, section 8, paragraph 17, article 1, expressly authorizes the United States to have exclusive jurisdiction of territory within the boundaries

of the States. Besides, the question of whether or not this constitutional guaranty has been violated, is a political and not a judicial question.

Mountain Timber Co. v. *Washington*, 243 U. S. 219.

Counsel for plaintiff in error express some fear that the National Government may permit acts in the ceded territory which are prohibited by the law of Arkansas, and they say "A situation so grotesque is not to be thought of." We agree with them that such a situation ought never to arise, and there is no possibility of it. We have already called attention to the fact that Congress in the act accepting the exclusive jurisdiction of the territory made the criminal laws of the city of Hot Springs, and the State of Arkansas, applicable in the ceded territory. It is true no laws have been enacted by Congress affecting civil rights in the territory, because the Arkansas Laws in force at the time of the cession have been deemed sufficient.

Since the act of the Arkansas Legislature approved March 29, 1913, relieving innkeepers from liability for property of their guests destroyed by fire, was passed after exclusive jurisdiction over the territory in question had been ceded to and accepted by the United States, the Arkansas statute cannot apply in the instant case, and the judgment of the Supreme Court of Arkansas must be affirmed.

Respectfully submitted,

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FILED
JAN 14 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 157

ARLINGTON HOTEL COMPANY,
PLAINTIFF IN ERROR,

Vs.

ELIZABETH H. FANT, MARY L. FORTUNE AND R. T. FANT,
DEFENDANTS IN ERROR.

MOTION OF MRS. ELISE WILLIAMS FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ, AND BRIEF OF AMICUS CURIÆ ON BEHALF OF DEFENDANTS IN ERROR.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 157

ARLINGTON HOTEL COMPANY,
PLAINTIFF IN ERROR,

Vs.

ELIZABETH H. FANT, MARY L. FORTUNE AND R. T. FANT,
DEFENDANTS IN ERROR.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIÆ.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for Mrs. Elise Williams, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiæ.

WILLIAM WALLER,
Counsel for Mrs. Elise Williams as Amicus Curiæ.

SETH M. WALKER,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938.

ERROR TO SUPREME COURT OF ARKANSAS.

No. 157.

ARLINGTON HOTEL COMPANY,
PLAINTIFF IN ERROR,

vs.

ELIZABETH H. FANT, MARY L. FORTUNE AND R. T. FANT,
DEFENDANTS IN ERROR.

BRIEF OF MRS. ELISE WILLIAMS, AS AMICUS CURIAE, ON BEHALF OF DEFENDANTS IN ERROR.

Preliminary Statement.

This brief is filed on behalf of the defendants in error by counsel for Mrs. Elise Williams, plaintiff in the case of Elise Williams *vs.* Arlington Hotel Company, now pending in the United States District Court for the Eastern District of Arkansas. When that action was instituted the defendant company filed a demurrer based upon the same insistences as are made by it in the case at bar. The District Court in an opinion reported in 15 Fed.

(2nd.) 412, sustained the demurrer, but the Circuit Court of Appeals for the Eighth Circuit, in an opinion reported in 22 Fed. (2nd.) 669, reversed the case and remanded it for trial. By agreement of counsel and at the suggestion of the District Court no further steps have been taken pending the decision of this Court in the case at bar, which will be controlling.

These and numerous other suits arose out of the destruction by fire of the Arlington Hotel at Hot Springs, Arkansas, in April, 1923, resulting in the loss of a large amount of personal property belonging to its guests. The hotel company disclaimed liability on the theory that an Arkansas Statute, approved March 29, 1913, Session Acts 1913, page 934 (Secs. 5564 to 5567 inclusive, Crawford and Moses' Digest of Arkansas Statutes, 1921) controls the rights of the parties. The insistence of the various plaintiffs is that this statute is inapplicable and that the common law controls, because the hotel was located on property owned by the United States, exclusive jurisdiction over which had been ceded by the State of Arkansas to the United States and accepted by the latter in 1903 prior to the enactment of the statute limiting the liability of innkeepers. The answer of the hotel company to this contention is that the Federal Government may exercise only such powers as are conferred upon it in the Constitution and that no power is conferred upon it to exercise political dominion or exclusive jurisdiction over property not used for one of the purposes specified in Article 1, Section 8 [17] of the Constitution, giving Congress power:

> "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of

the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

A brief history of the Hot Springs reservation (the name of which was changed to Hot Springs National Park by Act of Congress March 4, 1921, Sundry Civil Appropriation Act) is as follows: The third section of an Act of Congress, April 20, 1832 (4 Stat. 505), enacted that four sections of land, including the hot springs in Arkansas, should be reserved for the future disposal of the United States. In the Hot Springs Cases (1875), 92 U. S., 698, the Supreme Court sustained the title of the United States in these lands. Pursuant to Acts of Congress, March 3, 1877, C. 108, 19 Stat. 377, and December 16, 1878, C. 5, 20 Stat. 258, a permanent Hot Springs Reservation was set aside and the Secretary of Interior was directed to lease the site of the Arlington Hotel to the then proprietors, thereof, and also to lease the sites of existing bath houses and sites for the building of other bath houses. By Act of Congress March 3, 1891, C. 533, 26 Stat. 842, the Secretary of the Interior was again authorized and empowered to make similar leases. As will be observed from said statute the Federal Government at that time maintained an Army and Navy Hospital and bath house on the reservation, the original appropriation for which is found in Act of June 30, 1882, 22 Stat. 121.

In 1903 the Arkansas Legislature enacted the following statute (Acts of Arkansas for 1903, Act 30):

"An Act ceding jurisdiction of the United States over a part of the Hot Springs Mountain Reservation.

"BE IT ENACTED, By the General Assembly of the State of Arkansas:

"SECTION 1. That exclusive jurisdiction over that part of the Hot Springs Reservation known and described as a part of the Hot Springs Mountain, and whose limits are particularly described by the fol-

lowing boundary lines, commencing at stone monument number seven (7) set upon the west line of Reserve Avenue and marking the boundary line of Hot Springs Mountain, and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monument numbered forty-two (42) and marking the boundary line of Hot Springs Mountain, thence along the south line of Fountain Street to its intersection with Central Avenue or to a stone monument number thirty-three (33), thence south along the east line of Central Avenue to where the same is intersected by Reserve Avenue at stone monument number thirty (30), thence along the north boundary line of Reserve Avenue to stone monument number seven (7), the point of commencement, all in township two south, range nineteen west, in the County of Garland, State of Arkansas, being a part of the permanent United States Hot Springs Reservation, is hereby ceded and granted to the United States of America to be exercised so long as the same shall remain the property of the United States; provided, that this grant of jurisdiction shall not prevent the execution of any process of the state, civil or criminal, on any person who may be on such reservation or premises; provided, further, that the right to tax all structures and other property in private ownership on the Hot Springs Reservation accorded the State by the Act of Congress approved March 3, 1901 [1891], is hereby reserved to the State of Arkansas."

By Act of Congress, April 20, 1904, C. 1400, 33 Stat. 187, the cession was accepted by Congress subject to the conditions in the act of session, and it was provided that the territory described "shall be under the sole and exclusive jurisdiction of the United States and all laws applicable to places under such sole and exclusive jurisdiction shall have full force and effect therein." It was

further provided that the Federal Courts of the Eastern United States Judicial District of Arkansas should have jurisdiction of all offenses committed within said boundaries, and that acts which would constitute offenses under the municipal ordinances of Hot Springs, or the laws of the State of Arkansas, should be subject to the same punishment as by them provided. The territory described in this statute was that upon which the Army and Navy Hospital was located and it also included the site of the Arlington Hotel. At the time of the fire in 1923 this site was still under lease from the United States under authority of Act of Congress, August 24, 1912, C. 355, 37 Stat. 479.

The common law of innkeepers (see Pettit *vs.* Thomas, (1912), 103 Ark. 593) was in effect in the State of Arkansas at the time of this cession of jurisdiction and has never been changed or abrogated by Congress. It is not controverted that, in general, the laws in effect in a ceded territory at the time of cession continue in full force and effect unless and until changed or abrogated by the new sovereignty. C. R. I. & P. R. R. Co. *vs.* McGlinn (1885), 114 U. S. 542. Hence, if the cession by the State or Arkansas to the United States of exclusive jurisdiction over that portion of the Hot Springs Mountain which included the site of the Arlington Hotel and the acceptance thereof by Congress were valid and said jurisdiction was never ceded back and never reverted to the State of Arkansas, the common law of innkeepers, and not the Arkansas statute of 1913, is applicable, and the judgment of the Supreme Court of Arkansas in the case at bar must be affirmed.

The two opinions of the Supreme Court of Arkansas, the first reversing the action of the lower court in sustaining demurrers to the complaints, and the second sustaining judgment in favor of the plaintiffs (defendants in

error here) are reported as follows: Fant *vs.* Arlington Hotel Company (1926), 170 Ark. 440 and Arlington Hotel Co. *vs.* Fant (1928), 176 Ark., 613.

Summary of Argument.

1. The power of the United States to accept a cession of territory and to assume and exercise jurisdiction over it is an inherent power belonging to it as an independent sovereignty and need not be found in the Constitution, although it is impliedly recognized in Article IV, Section 3 [2]. The territorial extent of the jurisdiction exercised by a government is a political and not a judicial question and the action of the political departments of the government is conclusive on the courts.

2. Article I, Section 8 [17] of the Constitution does not limit or curtail the inherent power of the United States to acquire and exercise exclusive jurisdiction over territory ceded to it by a state.

3. The Army and Navy Hospital located on the reservation over which jurisdiction was ceded is, however, a "needful building" within the meaning of Article I, Section 8 [17] as are also the administrative buildings of the Department of the Interior, and the fact that other parts of the reservation may have been temporarily put to other uses could not cause a reverter of jurisdiction to the state where no such intention on the part of either government can be found.

Argument.

UNITED STATES AS INDEPENDENT SOVEREIGNTY HAS INHERENT POWER TO EXERCISE JURISDICTION OVER TERRITORY AND TERRITORIAL EXTENT THEREOF IS POLITICAL AND NOT JUDICIAL QUESTION.

It is of course axiomatic that as to territory over which the states have jurisdiction the United States has only

"concurrent jurisdiction," and may exercise only those powers conferred in the Constitution. On the other hand, as to territory subject to the jurisdiction of the United States, but not to the jurisdiction of any state, the Federal Government has exclusive jurisdiction and the statement that it may exercise only the powers conferred in the Constitution is therefore inapplicable. Even prior to the adoption of the Constitution, several of the states had ceded their lands to the Federal Government; and after the adoption of the Constitution and down to the present day the Federal Government has from time to time acquired and exercised and now exercises exclusive jurisdiction over various territories and possessions. This power is inherent in every independent sovereignty and is possessed by the United States although not expressly conferred. Jones *vs.* United States (1890), 137 U. S., 202.

There have been expressions from time to time in the opinions of this Court to the effect that the power of the United States to acquire territory depends upon the war and treaty making powers expressly given in the Constitution. There is, however, no grant of power in the Constitution to acquire territory by discovery. Yet in Jones *vs.* United States, *supra*, this power was sustained. The facts were that a citizen of the United States had discovered an island situated in the Carribean Sea containing a deposit of guano. It was provided by Act of Congress that the criminal laws of the United States applicable to offenses committed upon the high seas should be applicable to guano islands which have been determined by the President to appertain to the United States. Pursuant to said Act of Congress, the President determined that the island in question should be considered as appertaining to the United States. The defendant was indicted for murder committed on this island and contested the con-

stitutionality of the aforesaid Act of Congress. The Court said:

> "Who is the sovereign, de jure or de facto, of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances . . ." (137 U. S., 212).
>
> "All courts of justice are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government whose laws they administer, or of its recognition or denial of the sovereignty of a foreign power as appearing from the public acts of the legislature and executive, although those acts are not formally put in evidence, nor in accord with the pleadings." (137 U. S., 214.)

This inherent power to acquire territory and to exercise exclusive jurisdiction over it, while not expressly conferred in the Constitution, is nevertheless recognized in Article IV, Section 3 [2] providing that:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

Sere *vs.* Petot (1810), 6 Cranch, 332.

United States *vs.* Gratiot (1840), 14 Peters, 526, 537.

Mormon Church *vs.* United States (1889), 136 U. S., 42.

De Lima *vs.* Bidwell (1900), 182 U. S. 1, 196.

Downes *vs.* Bidwell (1900), 182 U. S., 244, 250, 267, 268, 285, 300, 307.

It probably would not be controverted that the Yellowstone Park was constitutionally established and that in the admission of Wyoming as a state (Act July 10, 1891, C. 664, 26 Stat., 222) exclusive legislation or jurisdiction over the Park was constitutionally reserved. The exclusive jurisdiction of the United States over the Yellowstone Park is further asserted in Act May 7, 1894, C. 72, 28 Stat., 73. Exclusive jurisdiction over the Sulphur Springs Reservation, now the Platt National Park (Resolution of June 29, 1906, No. 42, 34 Stat., 837) was likewise reserved in the admission of Oklahoma as a state (Act June 16, 1906, C. 3335, 34 Stat., 272). Certainly the United States is not obligated or required to include any particular area in a new state. Whether it does so or not is a political and not a judicial question. If a particular area is not included in any new state the United States must necessarily retain and exercise exclusive jurisdiction. This was the case with the Yellowstone Park and the Platt National Park.

On the other hand, upon the admission of Arkansas as a state the United States did not reserve exclusive jurisdiction over the Hot Springs Reservation. But by the statutes previously referred to the General Assembly of Arkansas ceded back to the United States exclusive jurisdiction over a part of it, subject to conditions and provisions not here important, and the United States accepted the cession. In the same way the states of Montana, Washington and Oregon, respectively, ceded to the United States and the United States accepted exclusive jurisdiction over the Glacier National Park (Act August 22, 1914, C. 264, 38 Stat., 699), the Mount Rainier National Park (Act June 30, 1916, C. 197, 39 Stat., 243), and the Crater Lake National Park (Act August 21, 1916, C. 368, 39 Stat., 521); California ceded and the United States accepted exclusive jurisdiction over the Yosemite, Sequoia, and General Grant National Parks (Act June 2, 1920, C. 218, 41 Stat., 731), and the Lassen Volcanic Na-

the other hand, where land within a state is acquired by the Federal Government by cession instead of by the mode prescribed by the Constitution, the state is competent to impose such conditions and reservations as it desires, provided they are not inconsistent with the purposes of the grant. The state therefore had the power to tax the railroad company's property, the reservation being a valid one.

The Court in that case very clearly distinguished the situation where the United States has merely the proprietary ownership of land within the state from the situation where it also has political dominion over it. The latter may be acquired either pursuant to Article I, Section 8 [17] of the Constitution or in other ways, for example, by cession from a state or by reservation of jurisdiction at the time of the admission of a state to the Union. Even if the United States does not possess political dominion the state nevertheless may not exercise its jurisdiction in a way to defeat or impair the effective use of the land by the United States for governmental purposes. But if in addition to proprietary ownership the United States also has political dominion, the state may not exercise any jurisdiction whatever except such as it may have reserved in making the cession.

The plaintiff in error has overlooked this distinction in the brief which it has filed in this Court. Excerpts from the Lowe case are quoted which bear upon the situation existing as to the Fort Leavenworth Reservation *before* the State of Kansas ceded jurisdiction to the United States. Thus at page 11 of the brief the following quotation is made from the opinion in the Lowe case:

> "So far as the land constituting the Reservation was not used for military purposes, the possession of the United States was only that of a proprietor. The State could have exercised with regard to it the same authority and jurisdiction which she could have ex-

ercised over similar property held by private parties." (114 U. S., 527.)

A reading of the context reveals that the Court was there discussing the "defect in the jurisdiction of the United States" which led to the cession of jurisdiction by the State of Kansas.

Again at page 14 of the brief the following quotation is made, with two sentences omitted which for the convenience of the Court we supply:

> "Where, therefore, lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the lands subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the general government. Their exemption from state control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But, when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits." (114 U. S., 539.)

This language again simply refers to cases in which the Federal Government has acquired the proprietary title to lands within a state without the acquisition of political jurisdiction. Such political jurisdiction may be acquired pursuant to Article I, Section 8 [17] of the Constitution, in which event there can be no limitation upon the Federal authority in favor of the state. But

as has already been seen, it may also be acquired, or rather retained, through a provision to that effect upon the admission of a new state to the Union; or it may be acquired through cession (or recession) by the state. In the absence of the acquisition of political jurisdiction by the United States in one of these ways, the state retains jurisdiction over lands owned by the United States subject only to the limitation that if the lands so acquired by the United States are for some governmental purpose, the state may not by legislation "destroy or impair their effective use for the purposes designed." If the land is acquired pursuant to Article I, Section 8 [17], viz., purchase with the consent of the legislature, exclusive jurisdiction is *ipso facto* acquired by the United States. This is the only mode *prescribed by the Constitution* for the acquisition by the United States of exclusive legislative power over lands within a state. But this mode is not exclusive and does not preclude the acquisition of jurisdiction by an express act ceding it or in any way limit the inherent power belonging to the United States as an independent sovereignty. That this is the correct construction of the paragraph in question is clear from the other parts of the opinion. For example, at page 531, it is said:

> "Where lands are acquired without such consent, the possession of the United States, *unless political jurisdiction be ceded to them in some other way*, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals." (Italics ours.)

The Court in the paragraph quoted from page 539 simply did not repeat what had already been made clear, to-

wit, that reference was not being made to cases where political jurisdiction has been ceded in some other way.

In Chicago, Rhode Island & Pacific Railroad Co. *vs.* McGlinn (1885), 114 U. S., 542, also involving the Fort Leavenworth Military Reservation, the Court, after referring to the case of Fort Leavenworth Railroad Co. *vs.* Lowe, *supra*, and to Article I, Section 8 [17] of the Constitution, said:

> "This is the only mode prescribed by the Federal Constitution for their acquisition of exclusive legislative power over it. When such legislative power is acquired in any other way, as by an express act ceding it, its cession may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended." (P. 545.)

In Benson *vs.* United States (1892), 146 U. S., 325, the third of the so-called Fort Leavenworth Cases, the Court after referring to the two cases already cited, said:

> "It was conceded that Article I, Section 8 of the Constitution was not applicable, as there was not within the terms of that section a purchase of the tract by the consent of the legislature of the state, but it was decided that, while a state has no power to cede away its territory to a foreign country, yet it can transfer jurisdiction to the general government." (P. 330.)

The sum and substance of the cases cited simply is that the mode prescribed by the Constitution is not the only mode by which the United States may acquire from a state exclusive jurisdiction or legislative power over territory. Territory may be ceded by a state to the United States and when this is done the state may impose such conditions and reservations as it may desire, provided they are not inconsistent with the effective use of the property by the United States for the desired purposes.

In the case at bar there was no reservation or condition that the future statutes of Arkansas should apply to the ceded territory. It follows, we submit, that they do not apply.

It is true that these cases had to do with territory needed by the United States for military purposes. But if Article I, Section 8 [17] does not impose a limitation upon the mode or means by which the United States may acquire exclusive jurisdiction over territory, upon what principle of construction can it be contended that it limits the purposes for which it may be acquired? It is of course to be assumed that a state will not recklessly dismember itself by cession of territory to the United States, nor would the United States recklessly accept such cessions if made; but these questions are for the political departments of the respective governments. The Constitution does not prevent the United States from assuming and exercising exclusive jurisdiction when ceded, any more than it inhibits the proprietary ownership of lands and property for non-governmental purposes, and the exercise thereover of legislative jurisdiction to the extent necessary for their protection, sustained in Utah Power & Light Co. *vs.* United States (1917), 243 U. S., 389, and cases cited.

CEDED TERRITORY WAS USED FOR GOVERNMENTAL PURPOSES AND TEMPORARY USE OF PORTION FOR OTHER PURPOSES NOT SUFFICIENT TO CAUSE REVERTER OF JURISDICTION.

Up to this point we have not stressed the fact that the Hot Springs National Park is, and has been from and before the time exclusive jurisdiction was ceded, used for strictly governmental purposes. The Army and Navy hospital and bath house is unquestionably a "needful building" within the meaning of Article I, Section 8 [17] of the Constitution, and the various administrative buildings located in the Park for the use of the Department of the Interior would seem to be within the same cate-

gory. It is useless to contend that the area is greater than is necessary for these purposes, since the establishment of the boundaries is for the determination of the political departments of the government and no judicial question is involved. Benson *vs.* United States (1892), 146 U. S., 345.

In the case cited the defendant was being tried for murder committed on the Fort Leavenworth Military Reservation. The Court said:

> "It is contended by appellant's counsel that, within the scope of those decisions, jurisdiction passed to the general government only over such portions of the reserve as are actually used for military purposes, and that the particular part of the reserve on which the crime charged was committed was used solely for farming purposes. But in matters of that kind the courts follow the action of the political department of the government. The entire tract had been legally reserved for military purposes. United States *vs.* Stone, 2 Wall, 525, 537. The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the Courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. There was, therefore, jurisdiction in the Circuit Court: and the first contention of plaintiff in error must be overruled." (P. 331.)

In the case at bar it was perfectly natural for the Federal Government to continue to lease to the plaintiff in error the small area on which its hotel was located at the time of the cession of jurisdiction, rather than to require its immediate demolition or removal. When the hotel finally burned in 1923 it was rebuilt outside the boundaries of the Park, and its former site is now unoccu-

pied. The decision in the Benson case is strictly applicable. That decision also disposes of any doubts which might have been created by the dictum in the Lowe case, repeated in the McGlinn case, that when exclusive jurisdiction is ceded by the legislature of the state to the Federal Government over places needed by the latter in the execution of its powers, "it is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the state." (114 U. S., 541.) Whatever may have been meant by this language, it is clear that it was not intended that the use of a portion of the ceded area for farming purposes as in the Benson case, or for a railroad right-of-way as in the McGlinn case, or for hotel purposes as in the case at bar, should cause a reverter to the state of jurisdiction over such portion.

In every instance where courts have declared a reverter of jurisdiction they have done so because such an intention on the part of the political departments of the state and Federal governments could be found, and not because of any lack of power on the part of the United States to retain jurisdiction. Thus in Palmer *vs.* Barrett (1896), 162 U. S., 399, and Crook-Horner Co. *vs.* Old Point Comfort Hotel Co. (1893), 54 Fed., 604, there were express provisions for reverter of jurisdiction in the event of non-user by the United States for the purposes specified in the acts of cession. In the case at bar, on the other hand, the only provision for reverter was in the event the United States should cease to own the land and no specification was made as to the uses to which the United States might devote it. That such reverter was not intended by either the State of Arkansas or by Congress is clear from the fact that the Arlington Hotel had been erected and was in operation at the time the State of Arkansas ceded and the United States assumed exclusive

jurisdiction; and the boundaries specified in the Act of Congress assuming jurisdiction included the site of the hotel. Furthermore, the Arkansas act of cession and the act of Congress accepting it both provided that the State of Arkansas might tax private structures located on the ceded territory, thereby recognizing that private structures might be located thereon without any surrender or impairment of the exclusive jurisdiction of the United States other than as expressly provided. There is nothing unusual in the lease by the Government of areas within the national parks for hotel purposes. See Act August 3, 1894, C. 198, 28 Stat., 222, and other statutes relating to Yellowstone Park. In regard to the Yellowstone Park, of course, there could be no reverter of jurisdiction to a state for the reason that the territory in question was never subject to the jurisdiction of any state.

The opinion of the District Court in Williams *vs.* Arlington Hotel Company, 15 Fed. (2nd.), 412, seems to be the only other authority relied upon by the plaintiff in error, but as pointed out in its brief this decision was reversed by the Circuit Court of Appeals, Williams *vs.* Arlington Hotel Company 22 Fed. (2nd.), 669. In the opinion of the District Court certain cases are cited which are not cited in plaintiff in error's brief in this Court, but to which we shall briefly refer. Renner *vs.* Bennett (1872), 21 Ohio St., 431, and State *vs.* Board of Commissioners (1899), 153 Ind., 302, are not in point because in each case it appears that the United States had totally abandoned and abdicated any authority whatever over the areas in question and had ceded jurisdiction back to the respective states. LaDuke *vs.* Melin (1920), 45 N. D., 349, is also inapplicable, because there it appeared that Congress had never formally accepted jurisdiction and the court was merely construing a provision of the North Dakota constitution stating that jurisdiction of certain "military reservations" was ceded to the United States. The Supreme Court of North Dakota held that there was

implied in said provision the condition or proviso that the jurisdiction should revert to the state when the land in question was no longer used for a "military reservation." In the case at bar, on the contrary, there was no statement in the act of cession as to the use contemplated; there has been no change in that use since the cession; and the Supreme Court of Arkansas, in construing its statute, has held that the Federal Government still has jurisdiction.

Conclusion.

It is, therefore, submitted that the decision of the Supreme Court of Arkansas in this case as well as that of the Circuit Court of Appeals for the Eighth Circuit in the case of Williams *vs.* Arlington Hotel Company, 22 Fed. (2nd.), 669, is sound and that the judgment should be affirmed.

Respectfully submitted,

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